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ABSTRACT

This report contains the proceedings of a hearing on the overidentification of students with disabilities that was conducted on October 4, 2001, before the United States House of Representatives Committee on Education and the Workforce. The report includes opening statements by Chairman John Boehner and Representative George Miller and the statements of: (1) Secretary of Education Roderick R. Paige; (2) Representative Chaka Fattah from Pennsylvania; (3) Thomas Hehir, lecturer on education at the Graduate School of Education at Harvard University; and (4) Matthew Ladner, Policy Director of Children First America. Concerns raised at the hearing include the overidentification of minority students for special education services, particularly African American boys, the link between poverty and disability, and the need for increased funding in special education. Extensive appendices include written statements of the participants, a letter submitted for the record by Gary Orfield, Daniel Losen, and Christopher Edley, Jr., from the Civil Rights Project at Harvard University, responses submitted for the record by Secretary Paige to questions asked by congressmen, a statement submitted for the record by Representative Hilda Solis, and a statement submitted for the record by Representative Harold Ford, Jr. (CR)

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ED 473 013

OVERIDENTIFICATION ISSUES WITHIN THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND THE NEED FOR REFORM

HEARING

BEFORE THE

COMMITTEE ON EDUCATION AND
THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, OCTOBER 4, 2001

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"OVERIDENTIFICATION ISSUES WITHIN THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND THE NEED FOR REFORM"

THURSDAY, OCTOBER 4, 2001

U.S. HOUSE OF REPRESENTATIVES,

COMMITTEE ON EDUCATION AND THE WORKFORCE,

WASHINGTON, D.C.

The committee met, pursuant to call, at 9:30 a.m., in Room 2175, Rayburn House Office Building, Hon. John A. Boehner [chairman of the committee] presiding.

Present: Representatives Boehner, Petri, Roukema, Hoekstra, McKeon, Castle, Souder, Norwood, Schaffer, Upton, Hilleary, Ehlers, Tancredo, Fletcher, DeMint, Isakson, Goodlatte, Biggert, Platts, Tiberi, Keller, Osborne, Miller, Kildee, Payne, Mink, Roemer, Scott, Woolsey, Rivers, McCarthy, Tierney, Sanchez, Kucinich, and McCollum.

Staff Present: Scott Galupo, Communications Specialist; Blake Hegeman, Legislative Assistant; Charles Hokanson, Professional Staff; Sally Lovejoy, Director of Education and Human Resources Policy; Patrick Lyden, Professional Staff Member; Faula Nowakowski, Staff Director; Krisann Pearce, Professional Staff Member; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Jo-Marie St. Martin, General Counsel; Heather Valentine, Press Secretary; John Lawrence, Minority Staff Director; Charles Barone, Minority Deputy Staff Director; Cheryl Johnson, Minority Counsel/Education and Oversight; James Kvaal, Minority Legislative Associate/Education; Maggie McDow, Minority Legislative Associate/Education; Alex Nock, Minority Legislative Associate/Education; Joe Novotny, Minority Staff Assistant/Education; and Brendan O'Neil, Minority Legislative Associate/Education.

Chairman Boehner. A quorum being present, the committee will come to order.

We are meeting today to hear testimony on overidentification issues within the Individuals with Disabilities Education Act, or, as we all know it, IDEA. Under committee rule 12(b) opening statements are limited to the Chairman and Ranking Minority Member of the committee. Therefore, if other members have statements, they will be included in the hearing record. With that, I ask 14 days to allow members' statements and other extraneous material with reference to the hearing to be inserted in the official hearing record.

Without objection, so ordered.

OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Let me welcome all of you to this morning's hearing, Secretary Paige, Congressman Fattah, and other witnesses, senior Democratic member Mr. Miller, and all of our colleagues from both sides of the aisle.

For a quarter century, the IDEA has played an important role in ensuring that the doors of learning are open to millions of students with disabilities. Originally passed in 1975, it declares that American children with special education needs must have access to the same public school education that every other young American enjoys.

The Federal Government has never come close to assuming its share of the financial burden required to meet the requirements of this mandate. While Federal funding for IDEA has increased by 173 percent since 1994, its still falls far short.

Nevertheless, the IDEA system has served a generation of students reasonably well. Countless students who would have previously been denied access to our Nation's public schools have been blessed with a chance to learn. Some have moved on to earn high school diplomas and college degrees. All have had opportunities they would have never had otherwise.

Not every story associated with IDEA is a story of success, however. While its triumphs greatly outnumber its failures, the IDEA system has developed serious cracks that Democrats and Republicans must work closely together to fix next year as we move to reauthorize this important program.

Today's hearing will focus on one of those cracks. Specifically, the issue of overidentification will be our focus. It has become increasingly evident that the IDEA system allows far too many students to be wrongly or mistakenly classified as in need of special education services.

As we will learn shortly, this problem strikes particularly hard at minority students. The issue of overidentification has prompted concern here in Congress. It is an issue that led our colleague from Pennsylvania, Mr. Fattah, to request this hearing last spring.

And whether the subject is the Elementary and Secondary Education Act or IDEA, improving our Nation's educational system starts with believing that every single American child can learn. To presume that any student is incapable of achieving academic success simply on the basis of race, ethnicity, or special needs is inconsistent with the principles upon which our Nation is built.

Our first witness this morning has done more this year to advance this cause than I think any other individual in America. Since taking office just 9 months ago, Secretary Paige has been a relentless champion for disadvantaged students. Mr. Secretary, we are honored to have you with us this morning.

This has been a historic year for Federal education policy. Republicans and Democrats have worked side by side to bring about real change and to refocus the Federal role on its original goal of helping those students who need help the most.

I want to thank my partner and my colleague, Mr. Miller from California, for his leadership and friendship as we have gone through this process. The reforms in H.R. 1, including the Reading First Initiative, ratified by the education conferees last week, will ease some of the burden on the IDEA system. But the fight against the soft bigotry of low expectations will take years to wage. Fundamental improvements are needed in the system itself.

When H.R. 1 is finished, reform and reauthorization of IDEA will be the next major education reform project for this committee. Reform or reauthorization must remain linked. Just as we cannot implement reform without resources, resources cannot be implemented without reform.

I know we will approach this project with the same vigor, candor, and trust that we have seen earlier this year. And we know our children and our schools deserve nothing less.

With that, I would like to yield to my colleague the gentleman from California, Mr. Miller.

WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX A.

OPENING STATEMENT OF RANKING MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Mr. Miller. Thank you, Mr. Chairman. Thank you very much for this hearing. And thank you to our colleague, Mr. Fattah, for asking for this hearing. And, Mr. Secretary, thank you for being here.

The subject matter of this hearing, the overidentification of children with disabilities, is a very serious issue.

Children who are misidentified for special education services can be relegated to inappropriate educational services that disadvantage them later in life. I hope that this hearing is to discover and determine what we can do about this issue, and is not an effort to undermine our efforts on the ESEA conference to reserve the full funding for IDEA.

It is an important aspect of our efforts to leave no child behind. In contrast, our efforts should be spent on ensuring the adequate monitoring and enforcement of IDEA.

Overidentification of children for special education services, especially minority children, is a serious issue that has had a damaging repercussion on our Nation's children. African American children represent just 14.8 percent of the population, but make up 20.2 percent of the children with disabilities.

In addition, the African American children, on average for the general population, are overrepresented in 10 of the 13 disability categories. However, there is also even a more troubling side to this story. African American boys are more likely to be identified for special education in affluent districts. Most upsetting is that African American children are least likely to get adequate services or service on their IEP upon identification for special education. In fact, the vast majority of States have serious compliance problems with the existing statutes and the Department of Education has yet to fully utilize the enforcement options given them in the last reauthorization of IDEA.

In 1997 this committee, under Republican leadership, took steps to address overidentification. Those changes removed any real Federal statutory incentive to overidentify.

Rather than call for changes in statutes in this area, I think we would better serve disabled children and their parents if we would support the Department and the States in their efforts to monitor and enforce the proper implementation of IDEA. Final regulations in the last reauthorization only went into effect in 1999. These regulations and the policies that they represent have not yet had time to make the desired changes.

Let me just add from my own personal experience, where I have been involved in litigation in three of the school districts in my district, most of the time what we see is people in their own foxholes fighting it out and the children not getting served as the result of the litigation and enforcement actions, toughened enforcement actions by both the Federal and State departments.

Finally we see a resolution of this, and finally we start to see teachers being trained, children being served, parents being calmed down, recognizing that services are available.

So I think the story is that, in fact, we can provide these services. We can do it on a timely basis. We can do it in a proper fashion. But there still continues to be a great deal of resistance. I would hope that seeking for the full funding and the mandatory spending for IDEA will help us alleviate this problem in many districts where resources are truly a very real problem.

Finally, I would also comment to our colleagues on the committee, the letter that we have received from the Civil Rights Project at Harvard University, which I think points out that the failure to properly enforce the law and to properly implement the law has led to very damaging overidentification of children, and an overidentification that could be prevented.

It also notes that we have discussed on this committee many times that the continued improvement and training of our teachers in the regular programs will help us preclude the overidentification and misidentification of children as we provide those children a better education in the early years with that early intervention and timely intervention in H.R. 1, with some of the early reading programs and the teacher improvement training and development programs that we have in that legislation.

I look forward to the hearings, Mr. Chairman, and thank you.

Chairman Boehner. Thank you.

Chairman Boehner. Without objection, the letter will be included in the record.

LETTER SUBMITTED FOR THE RECORD BY RANKING MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, FROM GARY ORFIELD, DANIEL LOSEN, AND CHRISTOPHER EDLEY, JR., THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY, CAMBRIDGE, MASSACHUSETTS – SEE APPENDIX B

Chairman Boehner. Our first witness today hardly needs any introduction, but let me take a moment to formally welcome him to our committee today. Secretary of Education Rod Paige was confirmed as Secretary by the Senate on January 20th of this year. He was born in Monticello, Mississippi. He is the son of public school educators.

Prior to being chosen by President Bush to lead the Education Department, Secretary Paige served as superintendent of the Houston Independent School District. In that position, he cemented his reputation as a reformer with results. And for his efforts, the American Association of School Administrators named him Superintendent of the Year in 2001.

On a more personal note, I would also mention that Secretary Paige spent 2 years of his career in my hometown, at the University of Cincinnati, where he was an assistant football coach and physical education instructor. And as the Cincinnati Enquirer noted earlier this year, "The Secretary is remembered as an educator who went the extra mile for students."

Chairman Boehner. We are honored to have you with us here this morning, Mr. Secretary, and we are interested in your testimony on this very important subject. With that, you may begin.

STATEMENT OF THE HONORABLE RODERICK R. PAIGE, SECRETARY OF EDUCATION, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, D.C.

Secretary Paige. Thank you, Mr. Chairman.

I am happy to appear before this committee and discuss with you issues relating to the implementation of the Individuals with Disabilities Education Act, including our very serious concern associated with the disproportionate number of minority children who are referred to special education. I am also eager to explain how these issues speak to our need to reform special education.

Back in January, as you will recall, President Bush made education his highest priority and laid out his educational agenda called No Child Left Behind. It has four pillars: accountability for results; flexibility and local control; expanded parental options; and doing what works to improve student performance.

We started this agenda with President Bush's plan to reauthorize the Elementary and Secondary Education Act of 1965. I am going to say that I have been very pleased by the bipartisan cooperation thus far in both the House and the Senate, especially members of this committee, in reauthorizing that Act. In particular, Mr. Chairman, I want to thank you and Mr. Miller and members of this committee for your hard work in producing and passing an excellent bill in the House.

The reauthorization of IDEA will build on the principles embodied in No Child Left Behind. The children served through the IDEA deserve the same thorough review of, the same deliberate attention to, and the same significant reform of, special education.

President Bush and I want to apply the four pillars of reform to IDEA, just as we did to the ESEA:

First, accountability for results is just as important for children with disabilities as for other children.

Second, flexibility and freedom from unnecessarily burdensome Federal red tape can help the school districts tailor services to the needs of students while preserving students' rights to appropriate services, a task that has been very difficult to achieve thus far.

Third, empowering parents to participate more meaningfully in their children's education will improve student performance.

And, finally, supporting teachers' methods and procedures based on scientific results will ensure that they are using what works in teaching our children with disabilities.

We have real challenges. We have identified a number of issues in this system that require our attention:

First, our system fails to teach many children fundamental skills like reading, and then inappropriately identifies some of them as having disabilities. Not only does this hurt those children who are misidentified, it also reduces the resources available to serve children with disabilities.

Second, our system identifies many children who have disabilities much too late. Research shows that children who pass through the early grades with undiagnosed and undetected disabilities will miss opportunities to benefit fully from instruction. In order to serve children as best we can, we ought to help schools identify disabilities earlier and address the particular needs of each student immediately. In short, we need to make sure that the right children receive the appropriate special education services under IDEA, and that they receive them as early as possible.

A third concern is when you look at State data, you find the proportion of minority students identified in some disability categories is dramatically greater than their share of the overall population. More specifically, African American students are labeled as mentally retarded and emotionally disturbed far out of proportion to their share of the student population. Department of Education national data shows that 2.2 percent of all black students, but only 0.8 percent of other students, are identified as mentally retarded. Similarly, 1.3 percent of all black students and only 0.87 percent of all white students are identified as emotionally disturbed.

Our fourth concern is about how well we are serving children with disabilities. If you look at how our special education programs are currently implemented in our schools, you will see that they do not always focus on giving high-quality instruction to all students. Instead, they too often focus on process as a means to avoiding conflict and litigation.

Our fifth concern is the issue of paperwork. As superintendent in Houston, I worked with the special education teachers who would do this critical work. I admire and respect them greatly, because I understand their frustration. As a practitioner, I can tell you that the paperwork and time required to demonstrate compliance with the IDEA regulations are discouraging many teachers from entering into special education fields and running many teachers who have made this critical decision out of the field.

Money alone will not address all of our needs. As I have discussed, special education is filled with many complex issues that need to be addressed within the context of a thorough review of IDEA as a part of a comprehensive package of reform. That is why the administration opposes a proposal of mandatory IDEA funding within the context of ESEA authorization. In fact, we are very concerned that these very proposals will impede rather than support special education reform.

President Bush and I recognize the many challenges faced by States and local cities in carrying out our responsibilities to educate children with disabilities. While IDEA funding has nearly tripled over the past 5 years, we recognize the importance of providing additional funding. That is why in his budget he has requested a $1 billion increase for IDEA, the largest increase ever requested by a President.

But we know in the IDEA, as with ESEA, that money is ineffective if it is not tied to accountability and reform. Money alone has not, will not, cannot improve student performance, which is our goal. We need research-based solutions. Our special education system needs solutions based on solid research. We must devise reform that will help all children with disabilities. That is why I am pleased to announce today that President Bush is creating a new commission to study the problem.

Under the leadership of former Governor Terry Branstad, the President's Commission on Excellence in Special Education will study Federal, State and local special education programs and recommend how we can reform our special education system in order to improve educational performance for children with disabilities. Specifically, it will tell us why new research is needed, how Federal and State requirements help to impede or improve special education, and what we should do to improve student performance and to assure that no child is left behind.

Our Assistant Secretary, Bob Pasternak is going to spearhead the reauthorization effort for us in the Department. His leadership in New Mexico will provide us with the foundation of our efforts to serve the improvements made by the last reauthorization and make needed updates to the current law.

We have been very fortunate to have him with us. President Bush, Bob, and I are determined to see that every child gets a sound education with the Commission's work. With your support and with the shared commitment to doing what is right for children with disabilities, I believe that we will get to the point where no child is left behind.

Thank you, Mr. Chairman.

WRITTEN STATEMENT OF THE HONORABLE RODERICK R. PAIGE, SECRETARY OF EDUCATION, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, D.C. – SEE APPENDIX C

Chairman Boehner. Mr. Secretary, thank you for your testimony. And let me congratulate you and the President on the creation of this commission to look at the issues that we have in IDEA and the improvements that can be made. I am sure that we will have more information about the makeup of this commission as the day goes on.

Let me begin by referring to one of the issues that my colleague, Mr. Miller, mentioned; that many of the regulations that came out of the 1997 reauthorization just went into effect. What is the Department doing today to better enforce the proper use of IDEA in our schools?

Secretary Paige. The primary efforts for the Department has to do with monitoring, resource allocation, research and technical assistance. Those are the primary areas that we are involved with in bringing this to come about. This is through our Office of Civil Rights and our Office of Special Education Programs.

Chairman Boehner. Mr. Secretary, last year the Congress - well, let's go back. Over the last 6 years, we have increased funding for IDEA some 174 percent. There is another large increase coming this year. But last year I think the increase was in the billion-dollar area. Has that money gone out to the States and school districts, and what can we anticipate with the increase of the billion plus that is going to be allocated this year in the appropriations process?

Secretary Paige. Yes, Mr. Chairman. The increase was $678 million last time. And that increase has gone out and there has been difficulty in getting that spent properly. The increase that President Bush proposes is 1.35 billion, which almost doubles the previous increases, and if you add the $2.5 billion proposed in the mandatory amendment, what we have done is created considerable power. And we have had some difficulty with the earlier increase of $678 million being properly spent.

Chairman Boehner. Can you outline for the committee what the difficulties have been over the last year in getting that $675 million?

Secretary Paige. Allow me to submit that to you for the record.

RESPONSE SUBMITTED FOR THE RECORD BY SECRETARY PAIGE TO A QUESTION SUBMITTED BY CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX D

Chairman Boehner. With that, let me yield to my colleague from California, Mr. Miller.

Mr. Miller. Well, I appreciate you submitting that for the record, but that is what this hearing is about. What is the problem?

Secretary Paige. Making sure that we have specific numbers so that we can give you accurate information, and that can be submitted to you this afternoon.

Mr. Miller. Well, my concern is this: that we have had a running competition in the Congress between the parties over the last 6 or 7 years to provide additional resources for IDEA. And the motivation for that has come, I assume, because all of us, without regard to party or type of district that we represent, have been pounded by local school authorities, by State officials, who simply say they cannot meet the demands and the requirements with the funding that they currently have.

We are told time and again by the parent organizations, by teacher organizations, by school administrators, that the requirements of this program are stripping the resources from other programs in the general education programs of the schools and the school districts, and therefore we need to fully fund this program. Is all of that wrong?

Secretary Paige. No, Mr. Miller. There is absolutely no challenge or objection to the idea that we need additional dollars in this program.

Mr. Miller. Why don't we need them this year? We just have to wait until next year?

Secretary Paige. We are talking about the rate at which that increase occurs, and that there is an increase in the proposal that the President submitted. The increase is a billion dollars, the largest ever proposed. On top of that increase, the Appropriations Committee has ideas about additional increases. So then –

Mr. Miller. So does the conference committee.

Secretary Paige. Yes, that is right. So we join you in the belief that the increases are needed, but we do not believe that the move around the appropriation process, which is a mandatory amendment, would provide the appropriate way to address those increases.

Mr. Miller. Mr. Secretary, with all due respect, I have to tell you that almost every Member of this Congress, in effect, has had their integrity and their word challenged on the theory that people believe - I can argue whether it is accurate or not - but people clearly believe that there is an obligation and a stated promise on the part of the Federal Government that we would fund 40 percent of this program, and we are not on a schedule to do that at the current levels for the next 20 years.

And people are trying to get that compacted down into some kind of foreseeable future. That is stated. And each and every member of this committee has been challenged, time and time and time again, on our failure to fulfill the promise of the Federal Government.

And with the question of the rate of the increases, the spendout of the increase, I can just tell you that when I look - and there are three very different kinds of districts, large districts, that I represent. I have been involved in litigation against all of them. I have asked the Department of Civil Rights and the Department of Ed and the State department to sanction them to withhold their money. They have done it.

But they have a serious resource problem in now funding the program that - they have entered into agreements with the Department of Justice and the Department of Education for the service of these kids. They are not able to carry that out. So the rate of increase is not a problem for them. Maybe it is a problem with the State distribution or something else that is going wrong here.

But I just don't think I can buy into this argument that somehow fulfilling that on some kind of scheduled basis over the next 8, 10, 12 years, and on a mandatory basis, is something we should not be doing.

Secretary Paige. Mr. Miller, we do agree that additional funding is necessary. But here are some things that we should be concerned about. States are still spending the 679 million increase from the last appropriation cycle. The proposal that the President has put on the table doubles that amount. The amendment would add 2.5 billion on top of that. So we are talking about appropriate expenditures that would increase student performance. Just expenditures alone is not our goal. We -

Mr. Miller. Mr. Secretary, you want to go through the number of children and families that are waiting for IEPs? You know, what you have is, you have these children, you know, they have an IEP, but they are on the waiting list. They don't have services available to them.

Why aren't the services available to them? Because in many instances the resources haven't been there. The school districts find it is easier to do a shuffle with these parents and these children over the academic year rather than provide them the services. And the children get in to more and more and more difficulty with the lack of those services. And that is going on not only in suburban districts, it is going on in rural districts and it is going on in urban districts.

Parents are being shunted from place to place, meeting after meeting, because services, in fact, nobody wants to pay for them because they don't have the resources. So I don't know if the States aren't spending the money, and maybe there is another side to this bargain. We will provide the money and they should spend it. But the lack of services and the time waiting for these services for these families is evident in almost every district, in every part of the country.

And so, you know, we may have a problem with how the States are running this program, but I am just telling you that the current funding that is flowing to the districts to acquire services for these children and to put trained professional people on these childrens' cases is simply not being done. It is just not being done.

Secretary Paige. I would not at all argue with that, Mr. Miller. The only departure that I would have with your comments is I would not assume that the only issue is a lack of dollars. There may be some problems found in the way that the system is performing. That is why we want to take a good look at the system while we are increasing funding.

In addition, we would like to have reform attached to the dollars. The amendment does not do that.

Mr. Miller. Well, I will be interested in the suggested reforms. We spent 3 years and we spent hours in hearings on a bipartisan basis, from Trent Lott to George Miller. And we listened to people, you know, in every facet of this system. And it took us 3 years to write that legislation. And that doesn't suggest that that is perfect or that is the end of the story, but I will be most interested in seeing that litany of reforms.

Chairman Boehner. The Chair recognizes the gentleman from Delaware, the chairman of the subcommittee, Mr. Castle.

Mr. Castle. Thank you, Mr. Chairman. This is obviously a very acrimonious and divisive subject. I come down on something you said, Mr. Secretary. Just putting new money, new Federal money, into it is not necessarily the answer. There are a lot of answers about the way this - there are a lot of questions about the way the system is working.

I would point out that the Federal Government has increased commitment tremendously in the last 6 years. The Federal Government has more than doubled it percentage-wise, going through from 7 to 17 percent of that this year. We are certainly moving in the right direction. But there are so many questions about the way this functions and the costs, I think we have to raise those.

Let me just ask you one of those questions for starters. We often hear talk that the Federal IDEA funding will free up. That was always an expression that was used, it was going to free up State and local resources. With recent increases that we have given to those programs, what evidence exists, if any, that this is or is not happening? That is, by the Federal Government putting in more money, we are just supplanting what the Federal and State governments had, and therefore they should be able to use that other money for other programs? Or is this all being eaten up by dealing with the problems of IDEA?

Do we have any evidence one way or the other on that?

Secretary Paige. One thing we know for sure, just in the way that the ESEA has operated, is that we can clearly show that the increases in funding have not improved student performance.

Mr. Castle. Well, that may be correct, too. I don't know if we have this evidence, but my question really relates to the idea that we have put a lot more money from IDEA - from the Federal sources into that program, and theoretically it was to free up local sources. Whether it is working effectively in terms of helping kids with their education or not - my question is, is that funding being freed up, or don't we know that at this point?

Secretary Paige. We don't know that at this point.

Mr. Castle. I would hope that is something that the commission would look at. That is a very vital, fundamental question. I have got to be honest. My sense is that the money is being spent in the IDEA program just additionally; it is not freeing up other sources.

Secretary Paige. We have a lot of suggestions that would lead us in that direction, but we don't know that for a fact. That is one of the reasons why the commission was appointed.

Mr. Castle. Let me go on to another subject. I agree with something you said. That is, reforms must be based on solid research. I could not agree with that more. I have talked about education research being a quagmire for problems up here many, many times. And you mentioned that we have data regarding several States. Do we have any national data? Or do we just have sort of sporadic data from a few States with respect to the subject of reforms?

Secretary Paige. Our primary data is based on State performance. It is primarily State-based data. However, there would be some national information about reading. But IDEA, across the board, is primarily State data.

Mr. Castle. I would hope, again, that is something that the commission can look at. I mean, I just don't think that we have sufficient data and research on how this program is working. We are all arguing sort of philosophically about it, if you will, as opposed to with any real knowledge. I think it is something that we have to do through OERI or this commission or something of that nature.

Secretary Paige. Yes, we will.

Mr. Castle. Another subject that you touched upon. We have heard that African American youth, and you referenced this actually, are disproportionately referred for special education services. But there is another distinction, and you also mentioned it. African American students are 3 times, that is the figure you used basically, as likely to be classified as mentally retarded, while white students are placed in the less stigmatizing category of learning disabled.

Are those children being discriminated against on the grounds of both race and disability? How do these categories, mentally retarded versus learning disabled, shape the expectations of parents, teachers, and students?

Secretary Paige. Repeat that question for me?

Mr. Castle. Basically, as you indicated, African American students are being classified at a rate of about 3 times greater as being mentally retarded. White students are generally placed in a different category that is, in my judgment, less stigmatizing, which is learning disabled.

And my first question is are these African American children being discriminated against on the grounds of both race and disability? And how do those categories, that is, mentally retarded versus learning disabled, shape the expectations of parents, teachers, and students, or even the programs which are administered?

Secretary Paige. That is one of the things that we are going to try to find out by looking at it. That is why we think that a good evidence review of this is very important. We know that these numbers are real, especially in some specific categories in some States, but we don't know specifically the cause of that.

For example, we know that poverty is a factor, but we don't know how that factor contributes to this overidentification or not. So we are not in a position to say directly that it is a bias decision made by the people who make the referrals.

Mr. Castle. Let me pursue that a little further, because I have heard that one of the reasons for disparities in the treatment of these students is lax enforcement. What can the Department of Education's Office of Civil Rights do to help?

Secretary Paige. Let me back up and respond to the part about the parents. There is a great outcry from African American parents about that category, mentally retarded; and there are charges, as evidenced by the cases brought to our Office of Civil Rights, about this concern. So it is fair to say that that is a big concern on the part of African American parents and teachers.

Mr. Castle. That is basically my follow-up question. What can your Office of Civil Rights do to help?

Secretary Paige. Our Office of Civil Rights is primarily in the business of monitoring to see if this is actually discrimination in action. OCR has conducted hundreds of investigations about this issue. As a result of their proactive approach, overrepresentation in more than 150 school districts has, over the past 8 years, been worked with to improve the situation. This is evidenced by the fact that the numbers are going down for those improper referrals.

They also offer research and technical assistance, and primarily help in four areas. One of the most important areas is in helping regular classroom teachers, who are very important to the referral process, gain skills in managing students who have some disabilities.

Mr. Castle. Thank you, Mr. Secretary. The starter time clock wasn't turned on, so I can go on forever. I have got to yield back. Let me just close.

Chairman Boehner. The gentleman's time has expired.

Mr. Castle. If I can just say this before, my time has totally expired, I am not one who believes that we should go to mandatory funding this year. I believe that we are going to have a scrap on our hands in dealing with OERI and this reauthorization - I mean with IDEA and its reauthorization next year. But I also feel that that commission that you just announced could be of vital importance to us if it is really given the ability and the latitude to really give us better answers than we have now to a lot of the questions which exist in this program.

I yield back to the Chairman.

Chairman Boehner. The Chair recognizes the gentleman from Indiana, Mr. Roemer.

Mr. Roemer. Welcome, Mr. Secretary. From my point of view, Mr. Secretary, I see this in two ways. One is that we have made a pledge in 1975 with the creation of IDEA that the Federal Government would provided 40 percent of the funding for our children to comply with the Federal mandates to educate these children.

Now, 26 years later, we are saying hold on, wait a minute, we need to do reforms and we need to do a little bit of funding. You said the President has pledged a $1 billion increase. According to my calculations, to get up to our commitment that we made 26 years ago, we need another $9 billion.

Now, as a conservative Democrat, the answer for me is not always money. But certainly when we have made pledges to help some of our most vulnerable and needy children and we are not close to fulfilling those 26-year-old pledges, and then we say 26 years later that we are going to have a commission to study this a little bit longer, I think we are falling far short of the needs and the requirements here. We need less emphasis put on commissions and more emphasis put on some compassion for these children.

Now, my second concern is what we are doing here today with the overidentification issue. Certainly in 1976 and 1977, there were 3.7 million eligible children in this program. Today there are 6.1 million. It is has grown. We may need to determine why it has grown. Some of that growth, Mr. Secretary, is a direct result of low-achieving students being put into IDEA programs.

And so it brings me to the concern of funding for ESEA. Now, I am a conferee on the House/Senate bill. And I would certainly like to see you and the President and Mr. Cress, who is in the room, fight for even more funding, so that, as you are saying on IDEA, we need to attach money with reform. That is exactly what we are doing with ESEA. We are requiring more tests. We will need more remediation. We need to make sure that money makes the reforms work. And if we don't get more money in the ESEA, well, I am not sure that we are going to meet that threshold.

So again from a conservative Democrat who has fought over spending, who has voted for balanced budgets, who has voted for constitutional amendments to limit the ability to get tax increases in this country, because I think spending cuts have been required with line item vetoes, this is an area that we have pledged to help our most vulnerable children in for 26 years. And it is high time that we live up to those pledges and that we fund Title 1 ESEA programs, we fund IDEA programs, and that we don't get into the rhetoric 26 years later of saying, well, it is just not the money. It is a big part of the money when we tie it to reforms.

So my question to you would be, will you help us get some additional money in ESEA for this conference, for the reforms that we are talking about? And secondly, will you help us on the emergency supplemental get more money for education?

Secretary Paige. Yes, thank you.

If there is anything that is really important to us it is that it be clear that we understand that children with disabilities need additional support. And when we say no child left behind, we are talking about all children, which includes children with disabilities. It should not be assumed that just mandatory funding of this would automatically improve student achievement or student performance, which is the bottom line of what we want. And I would not characterize the $1 billion increase that the President has proposed as a little bit of funding. If that is a little bit of funding, that would mean what has preceded it is even less than that.

The 40 percent pledge and keeping our word is very important to all of us. But important also is answering the question, 40 percent of what? Forty percent is an open issue unless we are sure that we can be specific about what this means.

That itself needs to be studied to determine what that amount is. There is a possibility that as you increase putting money into this, the cost can increase in the same way, so that the amount of money you are putting into it actually does not increase your percentage growth toward the 40 percent. So that has to be looked at.

In summary, we do want to increase funding, we will support increased funding, but we want those dollars to be tied to reform. And we would like to have a complete analysis of this issue to determine where the effective application of dollars would be appropriate.

Mr. Roemer. Mr. Secretary, I am not sure I got an answer to either one of my questions there. But I think we need less commissions and more pledges of help on education. If we can spend $40 billion on an emergency supplemental, that I supported, to go after terrorism, we cannot afford to neglect education in this country at the same time.

Chairman Boehner. The gentleman's time has expired.

Let me remind the members or announce to the members that the Secretary has to leave in about 20 minutes. For the benefit of all of our members, if we could tighten up our questioning to allow more members the opportunity, I would appreciate it.

The Chair recognizes the gentleman from Wisconsin, Mr. Petri.

Mr. Petri. Thank you very much. Thank you, Mr. Secretary, for your testimony and your indication of the new commission that is going to be working in this area.

Could you give us a little more information about that commission, when it is going to be reporting, and the membership and the issues that it is going to be looking at?

Secretary Paige. Yes, I can. The commission will report on April 30th, 2002. The commission will study Federal, State and local special ed programs, with the goal of recommending policies for improving education performance of children with disabilities.

Some examples of some of those issues will be the effectiveness and cost of special education and the appropriate role of the Federal Government in special education programming and funding; how Federal resources can best be used to improve educational results of students with disabilities; the effect of special education funding on decisions to serve, place, or refer students to special education services; the impact of providing appropriate early intervention in reading instruction on the referral and identification process; how the Federal Government can help States and local educational agencies provide high-quality education for students with disabilities, including the recruitment and retention of quality personnel, and the inclusion of students with disabilities in performance and accountability systems; the impact of Federal and the State statutory, regulatory, and administrative requirements on the cause and effect of the special education programs, and issues like that.

Mr. Petri. Secretary, I am curious to know, the measurement of success in this area isn't I don't think how much money we spend achieving the goal of 40 percent funding of some - whatever the 40 percent of the 100 percent figure is, it is helping young people maximize their potential even if they are handicapped in sometimes severe ways. Are there school districts or individual public or private schools that have worked with kids and have succeeded and have, in fact, achieved success in maximizing the potential for contribution later in life of students with disabilities? If it is impossible, then what are we doing? If there were places where it works, then let's build on them. Does the Department know of that or could it provide areas where in fact educators have succeeded in helping students with disabilities?

Secretary Paige. Yes. There are many examples of that and one that I can personally attest to. I have seen schools where appropriate reading instruction takes place. We saw that, coupled with that resulting in a lower percentage of students being identified as special education students. In addition to that, some of the problems identified, some of the students identified as special education being helped by appropriate reading instruction.

So just reading alone is a big tool that we could use. Appropriate reading instruction seems to clearly provide some relief.

Mr. Petri. Thank you.

The subject of the hearing is overidentification of people with disabilities, and we know that administrators have a tough time meeting their budgets and the demands that they have in finding funds to do that, whether they are a hospital or school or whatever, it is. And if there is more money, if a student is labeled disabled, there is a temptation to on the margin go ahead and label them if you can get more money. So may we not, if we don't have clear guidelines to the extent that is possible, be just creating a problem and making it grow by saying there is money here if you have people in this?

Secretary Paige. In fact, it is one of our major concerns, whether or not we are providing appropriate incentives to increase overidentification.

Mr. Petri. Thank you.

Chairman Boehner. The Chair recognizes the gentleman from Virginia, Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Secretary, it is good to see you again.

Secretary Paige. Thank you, Mr. Scott.

Mr. Scott. September 11th exposed some of the best and some of the worst of America. We saw the rescue personnel, heroism on the plane that crashed in Pennsylvania, but we also saw bigotry expressed by graffiti and new hate crimes. The last time you were here you expressed opposition and no tolerance for religious discrimination in hiring by sponsors of Federal programs. I was interested if anything that has happened here changes your mind and do you still oppose any change in the law that would permit the sponsor of a federally funded nonreligious program to tell some Americans that they were not qualified for employment solely because of their race or religion? Do you still oppose discrimination based on race and religion in Federally sponsored programs?

Secretary Paige. Absolutely.

Mr. Scott. Thank you.

We have had a debate on cessation of services. As you are aware, by virtue of the fact that someone has been designated as for special education we know that it is harder for them to keep up, harder if they get behind to catch up. Therefore, if you ever cease services, the chances of them ever graduating collapse and they are much more likely to get involved in crime. And I was interested in your position on changing the present law that requires services to continue notwithstanding disciplinary actions, knowing that those services could be continued in the classroom, outside of the classroom, even in a jail to make sure we continue education services for persons designated under IDEA.

Secretary Paige. Yes, IDEA is a very complex issue; and what we are proposing here is careful study and analysis to see if we can improve it, how it is implemented, how it is funded and how it works.

Mr. Scott. Does that mean you continue the present law of not ceasing services?

Secretary Paige. It does not mean that. It means that that situation should be studied carefully to determine what decisions should be made.

Mr. Scott. If it is determined that the crime rate will go up if we start ceasing services and that would not be a good idea.

Secretary Paige. First of all, we don't want to cease services for students who deserve services under this act. We want to increase and make those services more effective. We do not want to decrease services.

Mr. Scott. Thank you.

Mr. Chairman, out of courtesy to the other members, let me just make a statement rather than ask questions.

On the commission, Mr. Secretary, you mentioned research. I would be interested in whether or not you feel that the money going to research is enough and how after the research is done we can disseminate the best practices and will that search include how to identify people, particularly those who were described as on the margin. If they are not given IDEA services, whether or not you will be helping us deal with them some other way.

One other concern as we increase money for under IDEA, we want to make sure it is new money and we are not stealing money from some other worthy educational program.

I just make that comment out of courtesy. I yield back.

Chairman Boehner. I thank the gentleman.

The Chair recognizes the gentlelady from New Jersey, Mrs. Roukema.

Mrs. Roukema. I thank the chairman.

Secretary Paige, we really appreciate your being here today. And I would say it straight out, that I do believe in mandatory funding and support and do not believe in mandatory funding in a phased in way, as has been proposed by the Senate forces. I don't think it is contradictory to dealing with legitimate questions of needs for reform. I do not believe they are mutually contradictory. That is my own opinion here.

But getting back to your testimony and the issue before us today, I am very pleased with the announcements of the creation of a commission on excellence in special education. I hope you are going to really submit to us the details of the charge to that commission.

Secretary Paige. Absolutely. You can depend on that.

Mrs. Roukema. But getting back to what you said in your opening statement, you said there is a need for earlier identification of disabilities. I think you made that statement. However, I want to now get back to the subject of this hearing. What is your documentation that there has been overidentification or there is existing overidentification for students with learning disabilities under IDEA? I don't know, people have used that terminology, but I don't know what the documentation is for that, if the evidence has proven that that is the case.

Secretary Paige. On Friday -.

Mrs. Roukema. That is central to our whole question, to the issue. Yes.

Secretary Paige. The Harvard Civil Rights Project report contains in its executive summary - states in part, minority children deemed ineligible for special education are in jeopardy of being discriminated against on the grounds of both race and disability. Compared to white children African American children are almost three times more likely to be labeled mentally retarded. Far too many minority students receive low-quality services and watered-down curriculum.

In addition to that, we expect additional reports shortly that would speak to this issue. We do know that there are more minority children relative to their numbers being classified mentally retarded. We don't know why that is. That is why it needs studies.

Mrs. Roukema. Simply looking at it as a minority question or a possible discrimination question, if you will, excuse, quote, unquote, I am not using that language. But the inference here has been that there is ethnic discrimination going on, but I don't believe that that is a documentation of the overidentification of disabilities, speaking now on the larger question, because there are many, many, many students who are not minorities. I think we have to approach it at the larger question and treat the minority question as a legitimate one but really separate. That is not the overriding question of overidentification I don't believe - unless you can help me out on that.

Secretary Paige. Say that again, the last part?

Mrs. Roukema. Every time we talk in this discussion today we get down to the question of discrimination against minorities. But I think the overall question of the documentation of overidentification in the legislation or in practice is a much larger question than that. And I don't believe it is going on. But the claims that you and the administration are making and that many on this side of the aisle, I am not one of them, but on this side of the aisle are making are claims that it is a reason for postponing, delaying and opposing the full funding.

Secretary Paige. We want to be careful to say that we are saying that these numbers are contained in reports that we have received. We don't know the answer to why it is. That is why we think that this should be further investigated.

Mrs. Roukema. As part of the commission.

Secretary Paige. So in speaking specifically to your comment about discrimination, the only use of that word for me is a report from the Harvard Civil Rights Project and a statement taken from the executive summary which states, in part, minority children deemed eligible for special education are in jeopardy of being discriminated against on the grounds of both race and disability. Those are not my words.

Mrs. Roukema. I would just again say that I do not believe that mandatory funding is contradictory to the necessary overexamination that the commission will conduct. I do believe in that, and I think that is very positive.

I am not opposed to reforms, but I guess I have to confess to you and to all here today a little bit of a background here. New Jersey had this kind of legislation long before we had it at the Federal level. I was a member of the board of education that dealt with this issue. My daughter-in-law was head of a department of special education in one of the major school systems in my district; and my husband, as a psychiatric consultant, has dealt with this issue for many, many years. So I have some insights into this and would be very happy to work with you on this subject. But I don't think it requires us to postpone the reforms in funding.

Chairman Boehner. The gentlelady's time has expired.

The Chair recognizes the gentlelady from Michigan, Ms. Rivers.

Ms. Rivers. Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for speaking to us today. I have a couple of questions.

As I was listening to you and Mr. Miller talk somewhat at cross purposes I realized that in my experience as a school board member what both of you were saying was correct. In fact, anecdotally my experience is that there are African American students who are inappropriately labeled and more likely to be put in self-contained classrooms than other students. But also my experience is that we have a tremendous number of other students who are in fact qualified who are waiting in line who cannot get certification, who cannot get appropriate level of service; and I think it would be do all of us a disservice if we looked at one problem without looking at the other.

Because the suggestion that there may be students who are inappropriately being served begs the original question of how many more kids should actually be in this program and how much more money is it going to take us to serve all of these needs.

So one of the things I am interested in is, as you look at overcertification or inappropriate certification for some children, are you also going to be investigating the broad problem in this country of kids who cannot get certified even though they are qualified or who are not getting adequate level of service based on the certification?

Secretary Paige. Absolutely. In fact, in my testimony, I raise five concerns that we are going to be looking at specifically, among others. The subject of this hearing has to do with overrepresentation and overidentification, and that is why those specific statements are made. I would join you in saying that that barely scratches the surfaces of considering problems with this particular law, opportunity or opportunities to improve this law.

It should be said that a lot of children are being served well here, but more children should be served better.

Ms. Rivers. What is the vehicle for that second investigation? If you have the commission to look at overidentification, how will you investigate underidentification?

Secretary Paige. The commission would concern itself with that as well. We don't know now that the underidentification is a result of funding.

Ms. Rivers. But it would impact funding if there are actually more children to be served than we are now struggling with. That would impact it.

Let me go to funding. You said that we shouldn't suggest that what was being given in this newest budget was only a little bit of money because it is a billion. And you are right, a billion is a significant amount of money. But, of course, full funding is another $15 billion. So my question is, how long would it be reasonable for the education community in this country, the public schools, to wait to actually see that additional $15 billion? From the administration's point of view, how long is reasonable?

Secretary Paige. I think the administration is in favor of as early as possible effective use of dollars that actually result in student performance or student growth. We are not sure that that is occurring now. That is why we expressed this concern.

Ms. Rivers. To that end, then, would you make IDEA funding the highest priority for educational dollars in this country or what would your other priorities be before IDEA?

Secretary Paige. Our priority would include all matters dealing with no child being left behind, which includes children with disabilities; and our whole issue is to say that children with disabilities should be considered the same as children without disabilities because we are talking about no child being left behind.

Ms. Rivers. I understand that. But we do budgeting on line items. What I am asking you is, what are the line items that you believe should take greater priority over IDEA funding?

Secretary Paige. I am not prepared to make a statement about priorities right now.

Ms. Rivers. Could you give that to us in writing?

Secretary Paige. Yes.

Ms. Rivers. Thank you.

RESPONSE SUBMITTED FOR THE RECORD BY SECRETARY PAIGE TO QUESTIONS SUBMITTED BY THE HONORABLE LYNN RIVERS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX E

Ms. Rivers. Thank you, Mr. Chairman.

Chairman Boehner. The Chair recognizes the gentleman from California, Mr. McKeon.

Mr. McKeon. Thank you, Mr. Chairman.

I know that we are really trying to be more bipartisan in the Congress and in this committee, but just in the interest of fairness, if somebody had dropped into the audience from some other world and listened to this debate, it probably would think that people on our side of the aisle had really cut back the funding for IDEA over the last few years. So I want to put into the record this little chart showing that in fiscal year 1997, if you see the blue, this was what the President requested each year in funding for IDEA. The yellow is what the Congress has actually put in the budget the last several years.

You can see that this law was passed in 1975. From 1975 to 1997, funding had gone from zero for IDEA up to a little less than $2 billion. Since 1997, we have gone from the $3 billion that we appropriated at that time for IDEA to last year about $6.5 billion, and now the President this year has asked for the largest increase of any president.

So in the last 5 years we will have doubled IDEA funding. Granted I think we all agree that that is not enough, but I think we need to understand that we have done quite a job of increasing the funding for IDEA.

On the last break I was visiting with the superintendent and school board members of my district at home, and this was a big concern of theirs. The problem that I see isn't that the students with disabilities aren't getting services, they are. The problem is that the local districts are having to come up with money out of their general fund to meet the additional needs. They say that parents come in with an attorney and say, we want this, and this, and this. They find that they are better off providing the services even though it may cost $100,000 and their average daily amount that they are getting from the state is about $7,000. They have to come up with that out of their fund. If they continue to fight it and spend attorney fees, they end up even going further in the hole.

So it is a serious problem. I am glad that you have formed this commission to really look into it; it seems like we have dollars chasing dreams. There is more and more money going into funding for IDEA but, as was pointed out, the number of students that are now receiving these services has doubled and there is no guarantee that they won't double again in a couple of years.

So I think this hearing is very important, looking at overidentification. I think the commission is very important that you are working on. And I think we need to have some good, solid data to help our local districts to meet this serious problem.

One thing I would like to know, Mr. Secretary, isn't it premature to ask for a substantive change in this program when the local districts are still trying to implement the changes that were made in the 1997 law and haven't even fully come to grips with yet? And now we are asking for more substantive changes before we have the report from the commission, before we hold the hearings going through the reauthorization next year.

CHART SUBMITTED FOR THE RECORD BY THE HONORABLE HOWARD P. "BUCK" McKEON, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX F

Secretary Paige. Yes, absolutely. I will agree with that.

In addition to that, I would offer that most of the growth in child count has been in the learning disabilities area. Learning disabilities. A lot of latitude there. There are opportunities here for overidentification, misidentification, and late identification in this particular area. It is also a strong suggestion that many students are being identified in this particular category because they have not had the appropriate instruction in reading, and these are the things that we need to know.

What value is spending that does not lead to student achievement, of student growth or student assistance? Just spending isolated from knowing the answers to these real serious issues is and ineffective waste, I think, of Federal dollars.

Mr. McKeon. Thank you very much.

Chairman Boehner. Thank you, Mr. McKeon.

Mr. Secretary, we want to thank you for coming up today. And we ask that, if you will, for those members who didn't have the opportunity to ask a question, if, in fact, you would respond to their written questions, if they have them.

Secretary Paige. Thank you. We will absolutely be glad to do that.

Chairman Boehner. Thank you.

Mrs. Mink. Mr. Chairman, would it be possible to insert in the record our questions to the Secretary and request responses to the questions? This is a very, very important issue.

Chairman Boehner. Without objection, so ordered.

Mrs. Mink. Thank you.

Chairman Boehner. Our second panel consists of Congressman Chaka Fattah. He represents the Second Congressional District of Pennsylvania, which includes parts of Philadelphia and Delaware County. Currently serving in his fourth term in Congress, Congressman Fattah has taken the lead on major initiatives in education policy. He has been one of the leading voices in the House on behalf of disadvantaged students.

As I mentioned earlier, last March I received a letter from Congressman Fattah expressing alarm that he and many other Americans rightly felt about a study by the Civil Rights Project of Harvard University that suggested that minority students are much more likely to be wrongly classified as needing special education services. And I will also point out that Congressman Fattah is a former member of this committee.

With that, Mr. Fattah, welcome; and we are interested in your testimony.

STATEMENT OF THE HONORABLE CHAKA FATTAH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Fattah. Thank you, Mr. Chairman. I will submit my written testimony for the record.

Chairman Boehner. If the gentleman could turn on his mike.

Mr. Fattah. Thank you, Mr. Chairman. I will submit my written testimony for the record and would just like to make some comments to the committee.

I want to, first, thank you for convening this hearing as you indicated you would. I think it is an appropriate subject matter for the Congress.

In fact, it is a matter that this committee covered quite well in 1997. If we go back and look at the findings of this committee, we identified even then that there was an overidentification problem. I think many of the reforms that were put in place were aimed at correcting this, and we will see now that these new regulations have come out in 1999. Whether or not as they get implemented down the road this problem gets ameliorated in any way.

I want to thank the ranking member for his leadership, his comments and his assistance in getting prepared for this hearing. This is a matter that he has been involved with both locally and in his home State in a very intimate way and here in the Congress.

Let me just say hello to all of my former colleagues. I have had very fond memories of serving on the committee, particularly, Buck, working on the higher education and the reauthorization and the passage of GEAR UP.

Let me say that, to put this in context for me, Mr. Chairman, if we look at the big picture, not just special education but public education, that in every instance where there is a known research-based-education benefit to a particular set of dynamics, African American and other minority children are least likely to have access to it. That is to say, if we talk about a certified teacher, if we talk about a rigorous curriculum, if we talk about updated textbooks or computers or access to counselors, that in every single instance the things that we know help children learn, minority, African American, Latino, other disadvantaged students are least likely to come in contact with those things during the course of their education. That is the big picture.

Then when we get to special education, it is no different. That is to say that we have on one level the Secretary in his comments talked a lot about providing services to disabled children. The first issue is that we have children who are not disabled who are being labeled as being disabled and who are being pushed into a set of services and the most likely outcome is that they are going to fail.

So the first question is how to divert from this system young people who have no business being in it, and that is an issue that the Congress raised in its reform. And if we go all the way back, you know, to the beginning here, African American students, minority students in our country have always had a challenge in terms of education. That is that, at one point, it was against the law for them to be taught how to read. At another point, we had separate but equal schools. In 1975, when the Congress got into the business of special ed, there were a million or better students who were not in the public school system at all; and it was because the Congress intervened with the IDEA bill that disabled children were going to be provided an educational opportunity.

You are involved now in the Secondary Education Reauthorization Act. Thirty-five years ago, the Congress got in the business of trying to provide a better set of dynamics for poor children in States because States were failing to provide an adequate education to those poor children. And they still are today. Even though we have all this talk about accountability, there is not one proposal by this administration as of yet to hold States accountable. Even though we say it is a State responsibility, we don't want to hold them accountable. We want to hold everybody else accountable. We need to hold them accountable in all of these matters in a much more forceful way than we have.

I agree with the ranking member that the real question to the Secretary and to the Department is, what are they doing in terms of enforcement? What are they doing when they see school districts and they see States being lax on this question of overidentification? What are they doing with the tools that the Congress has already given them to cease these types of overidentification?

Then we have a problem of, once children are identified, why is it that African American and Latino children are being pushed in one direction? That is, towards the least educationally beneficial services, in the most severe labeling, inside this special education processes even that other children who happen to be white are being labeled in a different category and are being provided some other more excellent services that are available throughout all of our States?

So there are a number of complex issues here. But I think at the root of it is, up until this moment in this country's history, we have yet to come to grips with the fact that it is imperative that African American, Latino, and Native American children receive an excellent education and that we hold the State governments that have this responsibility accountable for doing that rather than special ed or basic ed.

I want to thank the chairman for having me. I would be glad to answer any questions that the chairman or the committee might have. Thank you.

Chairman Boehner. Thank you, Congressman.

WRITTEN STATEMENT OF THE HONORABLE CHAKA FATTAH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA – SEE APPENDIX G

Chairman Boehner. Considering that some of our colleagues didn't get to ask questions during the last round, we will start with those who didn't have that opportunity. The Chair would ask the gentlelady from New York if she has any questions.

Mrs. McCarthy. Thank you. It is good seeing you here. I wish you were still sitting up over here, though, but you can help us.

I appreciate the opportunity to add on top of what you basically have just stated. You know, one of the things, probably because of my background as a nurse, when the Secretary of Education was here and was talking about this commission and overidentification and everything else like that and why are minorities being labeled more mentally retarded, I am hoping somebody is going to look into the public health areas of these areas. I know certainly my minority areas, the schools they go to, I wouldn't send my child there. I will be honest with you. The asbestos, the boilers, are all unhealthy for every single one of these children. The substandard housing, unfortunately, that these young children live in, whether there is lead poisoning or anything else could possibly add up to these areas. So we have got to look at the health care issue.

We didn't even get into the opportunity to talk about early preeducation so that a lot of these children can be worked with at a very, very young age so hopefully by the time they get to kindergarten they already have the Head Start.

But a lot of the questions that I wanted to ask the Secretary unfortunately could not be asked. I will submit those questions.

You have always been there, you know, fighting for certainly the minority groups. And personally, you know, that is basically what I have started off at when I first got here, especially with IDEA.

I grew up with some of the learning disabilities. My son has learning disabilities. I didn't have the opportunity to have the classroom work. I actually started to improve when my son was diagnosed because I was able to sit down with him and learn how to read and learn how to do all the things I had to learn.

But going back to the misidentification and everything else like that, I just think that we have to look at all of the different problems that will be facing these young children before they get to the classroom. I think that is an important part of the ability for them to learn.

I know that in my district I have brought in private corporations because my schools didn't have the money overall to have the educational opportunities that the school district right next door has. They didn't have computers. They certainly didn't have qualified teachers. They certainly didn't have in the special needs what they need whether it was hearing or speech impediments or anything else like that.

I am lucky. My corporations want to help these students. I want to tell you, since they came in with the money, since they came in to help these special students, they are doing very, very well, extremely well; and they are promising them that they can go to college.

So when I sit here, from the time I first got on this committee, Mr. Goodling was the committee chairman at this time, and we fought for full funding of IDEA to help all of our schools, all of our children, with special needs, I sat here being very frustrated because, all of a sudden, we would be backing off from it. I am as conservative, as Tim Roemer is, on spending money because I run this place like I have to run my budget. But I also know where you have to invest money to get the results, and we have to invest the money into our children, into the future, if we are going to keep this country going the way they are.

I am sorry to give a speech, but I was very frustrated that I couldn't speak to the Secretary.

Mr. Fattah. Let me just say in response that the State of New York, the schools that are studied show that if you live in New York City and you went to the public school there versus its suburbs that there was going to be $57,000 less being spent on your education as a city student of the public schools in New York City than if you lived in one of the wealthy suburbs of New York in the public school system.

You have 150 rural school districts in New York who have filed a lawsuit saying that for special education and for other services they are not able to adequately provide for children in the rural areas of New York because of inadequate resources.

So the question of resources is obvious not for resources for resources sake, but when you are going to hire a certified, qualified teacher and some district 10 minutes away is going to pay double what you are going to pay, you are not going to get a high-quality teacher in that district.

The Carnegie Foundation has done a study that shows that, given a qualified teacher in the classroom, the most disadvantaged of children will do as well as any other child, that is the critical link in terms of their education. But that the only correlation to race in the country is if you happen to be an African American or Latino student you are least likely to have received a certified or qualified teacher. We have schools in California that have 50, 75 percent in Richmond, California, 75 percent of the teachers not certified, in fact, not certified in any subject.

So, and we can go through this, you know, we can go through it every time these test results come out. We say minority students are scoring below other students. Well, they are not just scoring below other students, they have been provided less opportunity to see a qualified teacher, to have adequate educational material, to get any of the things that we know are needed for them to get an education. As a country we should see it as a national disgrace. This special education is just another example of where minority youngsters in this country are getting short shrift in terms of the services that they should be getting on the positive side and being shuttered into the more negative aspects of public education policy.

We keep excusing States for any discussion in the policy process. We want to hold parents accountable. We want to hold students accountable. We want to punish failing schools. But the people who have the responsibility for these school systems, State governments, in every one of their State constitutions we have never held them accountable in this process in any way, shape or form.

Mr. Castle. [Presiding.] Thank you, Mrs. McCarthy.

The gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. Thank you, Mr. Chairman.

Congressman Fattah, welcome back to the committee. We are glad to have you here. I share your concern about this issue.

I am wondering if anyone has looked below the initial statistics that we have here in front of us that show that there is a clear, disproportionate number of minority students who are being identified, I know one has to assume misidentified, for special education programs and whether there is any information about where that misidentification is taking place. Is it concentrated?

Mr. Fattah. It is the classroom teacher that makes that initial determination. And there have been a lot of studies both by the Department of Ed and you are going to hear testimony from a number of experts into, you know, you have a number of problems. That is, you have on one end of the spectrum not many teachers who are African American or Latino or Native American in these classrooms. So where there are cultural differences or behavioral problems the teachers are not, you know, capable of understanding or addressing, they sometimes see a behavioral problem and move that along a continuum that leads to the kid being learning disabled or mentally retarded versus the kid that is just acting up.

Mr. Goodlatte. Labeled for life.

Mr. Fattah. And tracked in a misappropriate way educationally for life.

Mr. Goodlatte. Is there a particular type of school system, you mentioned the differences between different school systems. Does this happen more in inner city schools? Does it happen more in rural schools? Does it happen more in schools where there is a higher percentage of minorities?

Mr. Fattah. You are going to hear testimony this morning that shows that it happens everywhere and that no one should be left off the hot seat on this but that, to the degree that minority students are in more affluent white school districts, they are more likely to be mislabeled and overidentified. There is a stronger correlation in, probably in a commonsensical sort of way, in the reverse of what we would have expected. That is, that rather than being misidentified more in a district where the preponderance of the students has been African American, it is actually the reverse. It is true from a statistical standpoint. Obviously, the overidentification in those larger districts, however, urban districts, affect many more students even though the preponderance of it is less.

Mr. Goodlatte. Okay. Well, as I said, I share your concern. I think that there is an opportunity here to right a wrong and also I think to redirect resources to help minority students and probably all students by making sure that resources are allocated in a way so that students are given an opportunity to take advantage of the resources in a way that they are not mislabeled.

That is not to say that there aren't plenty of people who have real, serious learning problems that don't deserve to have a special program designed to help them. But I see parents and teachers. I have sisters who are teachers. I know the frustrations that they have in the classroom. I see parents, including white parents, who push to have their children labeled in this fashion, put into these programs, I think very, very mistakenly, where the question is really one of a behavioral problem and could be adjusted. And they get into a system where they didn't get, I think, put on a track, where they have been labeled for the rest of their school career and then probably for the kind of life they enjoy after school.

I am particularly concerned when I see numbers that show that two to three times as many minority students are being labeled this way. Because, clearly, I don't think there is any evidence to suggest that there is a proportionate reflection in society as a whole of minorities having learning disabilities at those rates. So I thank you for your efforts.

Mr. Fattah. Thank you.

Let me just say that the other problem, of course, is that special education is what we all wanted it to be. A child in special education labeled correctly or incorrectly would be getting excellent services and specialized education in such a way that they would be more likely to succeed.

The other problem on the flip side of this is that special education for many of these students is really being put into the shadows of public education in segregated classrooms in which they are not being provided the best teachers or the best of anything, unlike the ones who end up with parents who are in with lawyers advocating their children be placed in a private school setting with special one-on-one teaching arrangements. In fact, they are really being, you know, just dropped out of school without physically being dropped out; and everyone has, as the President has said, had very low expectations of what they may achieve. Then many of these young people, unfortunately, then create a self-fulfilling prophecy.

Mr. Goodlatte. Thank you very much.

Mr. Castle. The gentlewoman from California, Ms. Woolsey.

Ms. Woolsey. Thank you. I want to correct you, Mr. Fattah. We are not your former colleagues, we are still your colleagues, and we are coming at this from different venues and working together on it. I am so glad you are here.

Is there a nexus between overidentification and IDEA funding?

Mr. Fattah. In fact, the Congress in 1996 and with Chairman Goodling as head of this committee eliminated any incentive for overidentification in the funding stream. That is because the committee I think wisely tagged funding to census so that you are going to get the same amount of funding based on the census population whether you identified 1 percent or 90 percent of your students. So there is no financial incentive even though perhaps earlier on there was in the way that the program worked.

Ms. Woolsey. I think one of our-you were here for Secretary Paige's remarks, and one of our worries is that the need_the goal is to remove a population in the IDEA funding source and then cut funding because now we don't need that anymore. But we don't want it to be false. So I want to be clear of that.

But I hear what you are saying is that you think IDEA is being used to help kids who are lagging behind but need another kind of support. So tell us where you want us to go with that without taking away from the needs for IDEA.

Mr. Fattah. What I believe we ought to do in terms of education reform, broadly, is make sure every kid in this country gets a fully qualified teacher in the classroom they are going to be in, particularly in the core subjects. That is not the case today in any of our States. Most likely, the most disadvantaged students actually are in the circumstances in which they are not going to see a qualified teacher in the core subjects. So I think that is number one. I know the conferees are working on that as one of the items in terms of Title I, but I think it is a much more broad problem.

In Maryland, for instance, 6 percent of the teachers Statewide are not certified or qualified in the subjects that they are teaching. In the City of Baltimore, however, it is well over 35 percent. So that you have a situation where the students who are most in need actually are being provided the least qualified teachers in their classrooms in terms of textbooks, computers, education material. The same thing is true.

What I think we ought to do is decide that, no matter what the cost, ignorance probably costs this country more than a quality education for each of these children. And we need more of a referee in this process and we need to create a carrot-and-stick approach for States that force them for once to do for their poor children what they are doing for middle class and wealthy students in their States. They know that in every State we have public schools that work. They are in our wealthier suburbs. They work. Now the question is, why can't we do in our rural and urban districts the same thing? What is different about those wealthy suburban districts compared to our rural districts?

One, almost 100 percent of teachers are certified in substantive teaching. The classroom sizes are reduced in the early grades. They have the most up-to-date textbooks. They have a low counselor-to-student ratio. They have an adequate library. If you look at all of those factors and then look at the urban and rural districts, you will see that each of those factors is diminished in those districts.

So until we decide that State governments are going to have to provide for these poor children the same as they are providing for others we are always going to be in a position as a Federal Government trying to provide some type of band-aid help in this process.

Ms. Woolsey. Thank you so much. We miss you.

Mr. Fattah. I miss you, too, Lynn.

Mr. Castle. Thank you, Ms. Woolsey.

The gentlewoman from Illinois, Mrs. Biggert.

Mrs. Biggert. Thank you, Mr. Chairman.

From all these accolades, Congressman Fattah, I am sorry I wasn't on the committee when you were serving on it. I know that you are a proponent of the IDEA, and I, too, have always supported it, even as a school board member and as a member of the Illinois general assembly before coming here.

The Education Secretary just announced that there is going to be a new commission on excellence doing research on the IDEA. You talked about the National Academy of Sciences as being a means of looking at this minority overrepresentation question. Do you see those two entities being able to dovetail as far as the research, though, that we can move even faster? What is going on so far?

Mr. Fattah. Yes, I do. I want to commend the Secretary and both Sandy and the President for this commission approach. I think that, to the degree that it is really going to develop into these issues, it would be informed by the work of the National Academy of Science. The Congress has directed the National Academy to do a study in this regard. We expect those results this fall. I think it will inform all of us as we go forward. Because there are nuances in all of this that we have to more fully understand and appreciate if we are going to address this problem. And I think that the work of both can be useful, especially when looking forward to reauthorization next year. It will be part of your workload. I was going to say "burdened with" but I know it is not a burden but a pleasure for the committee to have the chance to reauthorize this important legislation.

So I think that there is a need for it because, especially given the elevation of the work, that is that a presidential commission will give a lot more gravitas, if you will, to this whole issue and hopefully help us move forward in an aggressive way in terms of addressing it.

Mrs. Biggert. Thank you.

Just one other question; in your testimony you had a very poignant story about a young man who was a football player and was discovered to be actually very bright that had been identified as mentally retarded. Are any of the special ed teachers trained to look for students that have been identified and to then move them back into a normal classroom? Do we have any statistics on how many students are returned to the normal classroom?

Mr. Fattah. The first part of that is that one of the problems is that most of the teachers who are confronted with these students, that is African American, Latino, Native American students, in the classroom have received no training about how to identify actual disabilities; and, therefore, that is part of the problem.

The second part about how these young people who may have been mislabeled or improperly labeled once receiving the services cannot get back into the mainstream is a group of statistics that would also be depressing because it is almost impossible for these young people to be removed from what is unfortunately a stigma. That is to say that they somehow don't have what it takes. This whole tracking of students through public education, you know, from mentally gifted on one side to slow learners on the other to mental retardation - the statistics are pretty devastating in terms of its impact on minority students.

It really is a disgrace that we allow it to continue, given hundreds of previous studies that have been done, including the great work that was done by Harvard University in a body of studies looking at this.

But I am convinced that the chairman, who has followed up with this hearing, and I again want to thank him , is really committed to developing this in a way in which we can make some progress. And I am hopeful that we will.

Mrs. Biggert. Thank you very much.

Thank you, Mr. Chairman.

Chairman Boehner. [Presiding.] The Chair recognizes the gentleman from Michigan, Mr. Kildee.

Mr. Kildee. Thank you, Mr. Chairman; and, Mr. Fattah, it is good to have you here, the number one advocate of equalization for a long time.

While it has been 37 years since I have been in the classroom teaching, the phenomenon you describe of misidentification of children is old, it is bad, and very often it is based upon racial factors. I can recall when I taught at Flint Central High School in Flint, Michigan, that African American males very often were directed to certain classes. I happened to be teaching Latin, and I had no African American males in my class. Not that I am saying Latin is the best subject in the whole world, although I read it every day.

Mr. Fattah. It is the foundation for learning language. I understand that.

Mr. Kildee. In my homeroom, which was a separate operation, I had an African American male, and I could tell that he had been misidentified for quite some time, but he was bright enough to not have been damaged that much even by the time he reached the 10th grade. So I recruited him into my Latin class. The counselors thought I was crazy. The counselors really had a bias. And he blossomed in that class. He really blossomed. He is living here in Washington, D.C., and we have lunch together every 2 months.

I make that a personal thing, that there are some people out there that were misidentified, and it is extremely damaging for the rest of their life. Maybe somebody can reach out and rescue one as I did with this one person there. But we really have to address this I think in a very serious manner.

I just want to express my appreciation that, among all areas of your advocacy, you have undertaken this one; and Congress should be working with you on that. Thank you very much.

Mr. Fattah. Let me thank you. You have your hands full with the reauthorization process, I am aware. But this is, I think, a point that needs to be made.

Without taking up too much of the committee's time, this is an incident that if you question 1,000 randomly selected African American males they will tell you the same, I mean you will hear the majority of them tell you the same story, that when I showed up in high school, my counselor decided that I was going to go into automobile shop. When questioned about this by my parents, since this was sight unseen before my first day in school, it was determined by the counselor that I wasn't college material. And, you know, that was a long time before, you know, my graduate degree from Penn and studying at Harvard and on and on. But this counselor had made this determination.

What was interesting about it is my mother, who had graduated from a different public high school in Philadelphia a generation earlier, had been shunted into a nonacademic track, and you can find that story prevalent throughout. That is, when we have people who are exercising their own prejudices and they are in a position to impact the lives of young people in ways that are life changing and sometimes very unfortunate ways, and they are determining that someone can learn or can't learn, you know, Latin or algebra or any of the critical subject material that young people need to learn, that we have outcomes that are predetermined in many respects. Even if some number of them find a way to escape it, so many more don't. It creates circumstances in our society that I think should be unwelcome to a national lawmaking body such as ours.

Mr. Kildee. Thank you very much.

Chairman Boehner. The Chair recognizes the gentleman from Delaware, Mr. Castle.

Mr. Castle. Well, Mr. Fattah, I just basically want to go down one line here, and you are involved with this, too. I appreciate all you are saying about equalization, being from a State that has done quite a bit about that. I also appreciate all you said about the need for everybody to have teachers of equal caliber. Those things to me are so self-apparent, we should be doing them, and frankly they should have been done on a local and State basis some time ago.

I think I know your answer to this, but I just want to hear you say it, and that is the whole business of getting kids up to the starting line equal that I am always talking about. But I believe that you are involved with the Head Start, the Even Start, and the day care programs that try to put greater educational components into those programs. I am also concerned about pre-kindergarten and kindergarten.

The reason for my concern, this isn't really so much a racial issue as it is more a question of kids coming maybe from poverty, but from households in which education and academic pursuits are just not a high priority or perhaps the parents are too busy or whatever it may be and these kids - and often they are low income, and a lot of these programs are low-income programs. My thought is that we can in some ways help get these kids ready so that they don't get into the business of being in kindergarten or first grade and then get classified, regardless of the color of their skin or anything else, as being kids who are learning disabled or have disabilities, and therefore filling the rolls of IDEA more than we have.

I also believe that the President's program, the extra billion dollars for reading in the early years, is extremely important. I haven't heard a disparaging word by anyone about that suggestion since it was made.

I would just like to get your views on the whole concept of early education, early reading and all of the things that we can do to make sure that those kids are being given an equal chance so we can determine if they can progress from there.

Mr. Fattah. Well, when we look back at this period in our country's history, that reading initiative by President Bush will be singularly his most important achievement. Because I think it will have an impact educationally for a long time to come. Your ability to read in the first grade is your key to opening the door of education, and we do have many students who appear at the first grade who can read and can recognize words. However, we have many who don't have that capability present at that point because they haven't been exposed. That is, if you come from a low-income family, your ability to spend disposable income on books, magazines and to have educational material and trips and vacations and exposures for the young people in your family is drastically different than if you are in a family with higher incomes.

But also we have found, and I think that the First Lady pointed this out more assertively than anyone else, to utilize Federal programs like Head Start as a means for educational enrichment, that is to say other than baby-sitting young people, we really should be training Head Start workers in literacy skills. That way they can help teach parents to teach your children to read so they can develop these students.

I can take you to areas in Philadelphia with the lowest incomes in which you have 3- and 4- and 5-year-olds who are reading who have offers of the month.

We started an initiative when I was in State government called the Children's Literacy Initiative where we supplied every day care and Head Start center with a set of books and reading instructional material; and it has worked fabulously. It is starting to turn around prospects for these young people.

But you even have to start earlier than that. That is to say that, like wealth, education attainment is generational. That is that the best predictor of how far a child will go in school is how far their parents went in school. So if you go back to a point when it was unlawful for me to learn how to read and write as an African American and you would have been put in jail for teaching me how to read, to a point in which we had, you know, separate but equal, and even up until now, in which almost every African American Latino-American student is going to be provided an inadequate education, then the most likely circumstance for their children is for a continuation of what we are into right now.

So that we have to break this continuum in a negative sort of way and energize a circumstance in which we are in, this committee is focused on in terms of adult education and in trying to really create a circumstance in which we short-circuit this kind of generation upon generation of limited access to education.

Mr. Castle. Thank you, sir. I yield back.

Chairman Boehner. The Chair recognizes the gentleman from New Jersey, Mr. Payne.

Mr. Payne. Thank you very much.

It is good to see you back, also; and I enjoyed listening to your testimony.

But let me just say that I couldn't agree with you more on this question about good teachers. It is the key. And the fact that equality and funding is so important, as an African American whose hair is also turning gray, I was told the same thing that you were told when I finished elementary school. They told me that I was ambidextrous. That means I can use both hands. In my neighborhood everybody had to use both hands. So it wasn't anything new. They did all of this testing, and that is all they came up with. So they told me that I should be some kind of mechanic and recommended a general course for high school.

The only reason I refused it was because my brother, who is 2 years older than me, they told him the same thing, and he would not take the general course. He was almost expelled from school because he went to the office every day to say that he wanted to take college prep. It took him two weeks. He just refused to go to class. This was a long time ago. And I came along 2 years later. He was able-he was put in the college preparatory. They just resisted it. Finally said, you are black, and you are poor, and you won't be able to go to college, so we don't want you to take something and finish and not be prepared for anything.

I knew when I went there they were going to do the same thing. But since my brother had fought the battle years earlier, it was easier for me to get into college preparatory.

But also the attitude of teachers is very important. Some people look at children and think they are destined to fail because they are poor. Maybe they speak a different language, complexion is a little different. That is another thing. I think that we need to put into our educational programs and the teaching school colleges a component about racial sensitivity, and I don't know how much they are doing at the current time.

I also taught for about 10 years and the same thing. Teachers would come and they would leave because they would get into a better school. They didn't want to teach-as a matter of fact, I had 41 students. I only had 40 seats. I didn't encourage absenteeism, but it was a problem if everybody came to class. Someone had to stand up.

But these overcrowded classrooms, a lot of those things still occur. A lot of these things. As a matter of fact, my-I also taught-I taught in elementary, junior high and secondary; and I also taught in the prison system. Now we never had any absentees there. Even our basketball team, we had no away games. And the students are well prepared. I mean, I did more preparing for that class because everyone read everything. They read additional stuff. They didn't have too many other things to do. So it was a real challenge.

But I just get back to your basic point. Good teachers are so key, smaller classrooms. Fortunately, in New Jersey they have what they call the Goddard decision, which is that the 30 special needs districts will have to have pre-K from age 3 years old.

I am a grandfather to triplet children. My son and daughter-in-law have two boys and a girl. They are 5. They are taking a school bus-that poor bus driver. But they go to kindergarten all day, which is very, very good. Of course, the State legislature has been fighting it and kicking and screaming. They don't want to do it. The courts had to bring them in and almost put them under arrest to have them equalize it.

So in these States where equalization is coming, you are going to have resistance, strong resistance from the suburban ones who have to say offset the deficiency in the other one.

So I would like to-I guess I just wanted to say that and commend you for the great work that you are doing and look forward to your continued and outstanding work on the Appropriations Committee and all that you did with the District of

Columbia's bill.

Mr. Fattah. Thank you.

Chairman Boehner. Well, thank you, Mr. Payne; and, Mr. Fattah, we thank you for your suggestion to have this hearing. Thank you for your input, and thank you for the issues that you championed.

There is no question that, as the President has described, low expectations are nothing more than softened bigotry. It does in fact exist, and I think your efforts in working with this committee, Mr. Miller, and myself on the President's education initiative is, in fact, a big step in forcing out into the public real data about what is happening in every school in America. Not just by school, but by race, income, and those with disabilities specifically.

I think that many times we underestimate the impact of that one little section, that one little piece of the bill that describes the disaggregation of this data, will have on education in the long term. Because information is power, and by arming parents, community leaders and others with hard data about what is happening in our schools, people won't be able to look the other way as they have for decades. I think you are well aware of this, and we appreciate your willingness to come here this morning and share your experiences and your background with us.

Mr. Fattah. Thank you for having me, Mr. Chairman.

I agree with you that that data is a critical element of the bill. I would hope that maybe we would add a few pieces to it, like what are the percentages of certified teachers in that school and what is the classroom size differential? What is the computer-to-student ratio? What is the counselor-to-student ratio?

You can go to Donald Payne's State of New Jersey, in Camden City, which is the poorest city in the State, and they have the highest counselor-to-student ratio of any school in the State. So the students who in most circumstances would need access to counselors, that need access to deal with their difficulties that they are experiencing in school and out of school, have the least access to it.

So I think that the data is very helpful disaggregated by race, but I think that data would not be complete if we just talk about what the outcomes are for students rather than talk about what the opportunity is. What is the State providing in terms of - if they are in Richmond, California, where 75 percent of the teachers are not certified, and we see the test results from this school and say, well, the kids aren't doing all that well compared to Beverly Hills, California, where 100 percent of the teachers are certified, unless somebody gives us that information about the quality of the teaching staff, then our analysis of the data will not be as informed as it should have been.

But I do want to say that I think it is critical, and I do thank you for having me here for this hearing.

Chairman Boehner. If the gentleman will stay one minute, Mr. Isakson.

Mr. Isakson. I apologize. I was not here for your remarks. But I read them before I left because you and I have had many discussions on wealth per child, et cetera. I am not going to ask you a question, because I don't want to put you in a spot that I don't think that you ought to be put in. But I do want to get something on the record that I really couldn't with regard to Secretary Paige's testimony, but in fact it ties to a lot of what you said.

This issue over the full funding of IDEA mandatory and this issue of getting our eligibility and our identification straight, is to me, in large measure, inextricably tied. I wanted to for the record say that the concerns you have are valid concerns. Disproportionate employment of resources in disproportionately high-identified IDEA schools is a problem, and that has a lot to do with what you said about the identification of minorities.

But I would say that we all need to remember that in 1997, the Congress changed the way in which IDEA funds flowed to the States to a capitated population poverty formula rather than a per student.

Mr. Fattah. I mentioned that in my testimony.

Mr. Isakson. So if we rush to mandatory funding and delay or protract the eligibility question and the identification question, then we - the unintended consequence is that a lower amount of funds go to the very students that need the funds the most, because you continue to have a large census.

So the reason I am not posing this as a question - I am not trying to trap you in what you said and take it to a political position. It is really not a political position with me. But I hope as we finish this debate regarding IDEA and we recognize the exact need that you have recognized for this hearing that we tie that funding to the identification and the eligibility so that the maximum amount of funds go to the actual students that are supposed to benefit.

I appreciate the gentleman letting me use his time. I really have a great respect for Chaka's effort in funding education at the local level and his concern with education.

Mr. Fattah. Thank you, Mr. Chairman.

In conclusion, if I could just say briefly that I thought it was unfortunate the other day that the National Conference of State Legislatures took the position that they took vis-a-vis the reauthorization and the President's reform efforts.

But I think that, as right as it is for State legislators to have some criticism or quarrel with what we might be doing, it is perfectly appropriate and will be necessary if these children are ever going to get a quality education, the ones that we are concerned about in the failing schools, it will be necessary for this Congress to take issue with the inability of the State governments up to this point in this country's history to provide an adequate education to the poorest children in their State, particularly those in racial minority groups, but not limited to those, because the same statement could be made and is true in rural schools in these States. We are going to have to be more willing to do what they did, to speak our mind and to, as a matter of policy, demand some accountability at the State level, also.

Thank you.

Chairman Boehner. I would like to invite our last panel to come to the table. While they are getting settled in, Dr. Hehir and Dr. Ladner, let me go ahead and introduce both of them to you.

Dr. Thomas Hehir is a Lecturer on Education and Director of the School Leadership Program at Harvard University. Prior to arriving at his current position, Dr. Hehir served as Director of the United States Department of Education's Office of Special Education Programs. As Director he played a leading role in the reauthorization of the IDEA Act in 1997. Dr. Hehir holds a Doctorate in education from Harvard University.

Our other witness will be Dr. Matthew Ladner. Dr. Ladner is the Director of Policy for Children First America, an education foundation that seeks to promote school choice for low-income students. He also served as the Senior Education Policy Analyst for the Texas Office of the Comptroller, and as a Professor of Government at Austin Community College. Dr. Ladner holds a Master's and Doctorate in political science from the University of Houston.

Chairman Boehner. With that, Dr. Hehir, we would like to hear from you.

STATEMENT OF THOMAS HEHIR, LECTURER ON EDUCATION, GRADUATE SCHOOL OF EDUCATION, HARVARD UNIVERSITY, CAMBRIDGE, MASSACHUSETTS

Mr. Hehir. Thank you, Mr. Chairman. Good morning.

In addition to the qualifications you talked about, Mr. Chairman, I also would like to mention that prior to coming to Washington I was Associate Superintendent of schools in Chicago, and prior to that I had leadership responsibility for special education in Boston. I also began my career as a special education teacher.

I have been asked to speak about this issue this morning. Specifically, I have been asked to talk about whether this issue is connected to the movement in Congress to fully fund IDEA. I would like to speak about that.

Essentially, my position on these issues is that they are not related, and the failure to meet Federal fiscal commitments to special education may actually be making the very real problem of overrepresentation of minorities, particularly African Americans, worse. I hope my remarks today will clarify these issues.

To begin with, I believe that the inappropriate placement of minorities, particularly African American males, in special education classrooms is a serious problem worthy of the attention of this committee. It is clear to me from both research and my own personal experience that there are significant numbers of African American students who have been inappropriately placed in special education, particularly special education classrooms. There is also further evidence that these African American students, both those appropriately and inappropriately identified, are disproportionately served in separate or segregated settings.

Some overrepresentation of minorities in special education may be due to the well-documented link between poverty and disability. The National Longitudinal Transition Study found some degree of overrepresentation even in unambiguous categories of significant disability such as blindness and deafness.

The study, which included large samples of students in the late 1980s and early 1990s, documented rates of African Americans in these disabilities, the more significant disabilities, of a little over 20 percent compared to a 15 percent rate in the overall population.

The overrepresentation of minorities in these categories of significant disability is likely due to the impact of poverty and inferior access to health care. For instance, poor woman are more apt to have low birth weight babies. Poor children are more likely to be exposed to trauma in their environment as well as to lead. Those factors and many others associated with poverty can increase the incidents of disability in the population. Therefore, given the fact that African American children are much more likely to be poor than the general population, some, and I want to emphasize this point, some overrepresentation should be expected.

The link between poverty and disability has been dealt with extensively in a report to Congress by the Department of Education in 1997, and I would suggest that you look at that report because it does get quite specific about that issue.

However, even if you assume that there is a link between poverty and disability, the overrepresentation of minority students, particularly African Americans, in ambiguous categories of disability is significantly greater than that which would be predicted by poverty, particularly in the category of mild mental retardation in which the African American population approaches 40 percent. This means that African American students, as other people have testified and as the Civil Rights Project at Harvard found, are almost twice as likely to be labeled mentally retarded than white students.

Added to this is that, once these children are identified, they are much more apt to be placed in segregated settings than the overall special education population.

Again, this issue was addressed in a report to Congress in 1996 and in the Eighteenth Annual Report to Congress, and again I will suggest that you look at that.

This committee, under the leadership of Mr. Goodling, as many people have mentioned this morning, with strong bipartisan support took significant action on this issue when it reauthorized IDEA in 1997. The IDEA has been amended in significant ways to address this issue.

First, States, as you know, as we have talked about today, are required to collect racial data. This was not required before the reauthorization in 1997.

Further, in order to alleviate the low expectations that many people have talked about that are associated with special education placements, this committee wisely required that kids with disabilities be part of the accountability systems in education, that they be tested when we determine whether kids have learned to read and whether they have learned mathematics.

Finally, this committee added some important enforcement mechanisms to assist the Department of Education in its efforts to implement these new provisions.

Some might argue that these changes have not worked and, therefore, further reform is needed. It should be noted, however, that the implementing regulations for the 1997 amendments did not take effect until 1999. I am sure members of this committee would recognize that the American education system does not change that rapidly; and, actually, in my opinion, requiring school districts to go through another set of significant changes to IDEA before those have even taken root would be very problematic.

Some have remarked that Congress should not meet its fiscal commitments until these problems are resolved. I strongly disagree for the following reasons:

First, as other people have mentioned, there is no fiscal incentive now to overidentify children. Again, I believe this committee wisely changed the funding formula to a census in poverty basis. Thus, the school district that does overidentify students does not receive additional money under IDEA.

This specific amendment was recommended by the administration - the previous administration, the Clinton administration, specifically as a means for addressing the overrepresentation issue. We did not feel at that time that it was appropriate to have a fiscal incentive to identify children under IDEA.

The failure to provide adequate Federal funding for special education may actually be exacerbating the problem of overrepresentation, in my view. A number of researchers have identified the lack of early reading and behavioral interventions as a contributing factor to the problem.

Dr. Reid Lyon, who is an advisor to President Bush, along with several eminent colleagues has written an excellent article, *Rethinking Learning Disabilities*, that calls for greatly expanded efforts to address the issue of early failure in reading in the primary grades.

Implementation of these recommendations would go, I believe, a long way to addressing the issue of overrepresentation. However, the irony in this, as it relates to the funding issues, is that those school districts that have the largest number of African American students, school districts that are urban in nature or someplace in the south, rural in nature, oftentimes do not have the funding available to do these innovations recommended by Dr. Lyon and a number of other researchers. These very school districts are the ones for which IDEA creates a tremendous financial burden that I believe the Congress has a responsibility to help address.

There are several things that the committee could do in my view that I would recommend to address this issue.

First, I would recommend that you would work with other appropriate committees to increase access to health services for women and children. There is some overrepresentation that can be explained by poverty. That doesn't mean we should accept that. We should be making sure that all women have access to high-quality prenatal care.

Second, support early intervention programs, which I believe you have been doing, particularly with several of the recommendations that have come from the current administration. I support those strongly as it relates particularly to providing children who are struggling with reading with research-based approaches to improved reading instructions and also not negotiating the area of behavior as well. Providing early intervention for children having significant behavior problems in school is a highly effective technique.

Third, I would recommend increasing the funding for discretionary programs under IDEA in the area of research and technical assistance and teacher training. These programs have been highly effective in promoting innovation. However, they are relatively poorly funded in my view and should be funded at a higher level.

Fourth, I would support improved monitoring and enforcement efforts. Under IDEA there are powerful new monitoring enforcement mechanisms that were placed in the 1997 reauthorization. Prior to 1997, basically the only mechanism that the Department had was total withholding of funding from a State. Very few States can afford to have all of their special education funding cut off, and when you can only cut off all funding to the State, you are actually punishing the people doing the right thing as well as the people doing the wrong thing. Wisely, in the last reauthorization, you included other types of mechanisms where there would be partial withholding of funds.

One of the things that the Harvard study identified was that some of the districts that are most, I would say, egregious in this issue are often more affluent districts in suburban communities. States under the new reauthorization could withhold funds to just those communities. I would suggest that you would encourage that.

I think it is also important to recognize in the enforcement area that the Department of Education only has about 50 people to enforce a program that has over 5 million children in it. I would say without question, as having had managerial responsibility for this department for 6 years during the Clinton administration, that this is a highly dedicated group of folks, but it is woefully inadequate for the job in terms of the number of folks involved.

But I also think, in addition to having increases in the work force, there must be support for greater enforcement. One of the things I found when I was director in the Department is that when we engaged in enforcement activities oftentimes Members of Congress quickly came to criticize us for engaging in enforcement actions. So it is important that both the administration and Congress support enforcement of IDEA.

Finally, given the importance of school districts being able to provide the types of early interventions that kids need, I would recommend that you fully fund IDEA.

I would be glad to answer any questions that you may have.

Chairman Boehner. Thank you.

WRITTEN STATEMENT OF THOMAS HEHIR, LECTURER ON EDUCATION, GRADUATE SCHOOL OF EDUCATION, HARVARD UNIVERSITY, CAMBRIDGE, MASSACHUSETTS – SEE APPENDIX H

Chairman Boehner. Mr. Ladner, you may begin.

STATEMENT OF MATTHEW LADNER, POLICY DIRECTOR, CHILDREN FIRST AMERICA, SMITHVILLE, TEXAS

Mr. Ladner. My name is Dr. Matthew Ladner. I serve as the Policy Director of Children First America, a major education foundation promoting choice in education for low-income students.

Last year, my co-author and I, Dr. Christopher Hammons of Houston Baptist University, conducted a statistical study of race and special education rates on behalf of the Thomas B. Fordham Foundation and the Progressive Policy Institute. Our study, titled Special But Unequal: Race and Special Education, was included in an edited volume called Rethinking Special Education for a New Century, which was published by the Thomas B. Fordham Foundation and Progressive Policy Institute in May, 2001. I am honored to summarize our research findings for your consideration.

The basic thrust of our study was to examine statistical data in order to determine whether a student's race impacts his or her probability for receiving a special education label from a public school district. It has long been known that minorities are overrepresented in special education programs, but what dry statistics do not tell us is whether race plays a role in special education labeling independent of other factors, too.

We began our investigation by examining countywide special education rates from California, Colorado, Florida, Georgia, Maryland, New York, Oregon, Texas and Wisconsin. Our analysis revealed that counties with higher percentages of white students had higher special education rates independent of other factors, such as the number of children in free reduced lunch program or overall spending per pupil. This funding was paradoxical. It seemed to be completely at odds with the documented fact that minorities are overrepresented in special education.

We moved on to examine district level data from Florida, Maryland and Texas, finding the exact same pattern. The higher the percentage of white students in a school district student body, the higher the special education rates, even after the introduction of a number of controlled variables.

After introducing a number of other controlled variables, my co-author and I were forced to conclude that race plays a very large role in the diagnosis process. The fact that the data found that high percentages of minority students in a district is associated with lower overall special education rates while minorities overall are grossly overrepresented in special education programs led us to reach the following specific conclusions.

Specifically, not only are minorities overrepresented in special education but minorities are significantly more likely to be placed in special education programs when they attend predominately white school districts. In other words, predominately white schools with predominately white students, predominately white teachers and predominately white school administrators place a disproportionately high number of their minority students into special education, completely independent of other considerations.

I do not believe that the incentives involved in special education programs in this country are well understood as yet. I do know for certain that the current law, as it stands now, has done nothing as yet to prevent a very large increase in the number of minority children who have been given a special education label, and I know that these labels have not been assigned in anything close to a color-blind fashion.

We do not know exactly how Federal finances have impacted the problem we have. Only the current levels of funding have seemed more than adequate to have financed this large increase in minority labels we see today.

An increase in Federal funding for special education without a much clearer understanding of how and why districts label children of color as having specific learning disabilities, in particular, poses a significant danger of either creating or increasing its labeling of minority children as having disabilities without just cause.

Chairman Boehner. Dr. Ladner, thank you.

WRITTEN STATEMENT OF MATTHEW LADNER, POLICY DIRECTOR, CHILDREN FIRST AMERICA, SMITHVILLE, TEXAS – SEE APPENDIX I

Chairman Boehner. I think the Chair will start by recognizing the gentleman from Colorado, Mr. Schaffer.

Mr. Schaffer. Thank you, Mr. Chairman. I have a number of comments and questions.

First of all, with respect to some of the funding issues that have been raised earlier when the Secretary was here, the politics involved in IDEA funding are almost as alarming as some of the trends that can be observed in correlating the data. But the fact is, and I really wish the Secretary were still here and other members as well, over the last 3 years we have had an opportunity to increase IDEA funding on the floor of the House to the tune of about $3 billion.

I have gone through and asked the staff to go through the roll call votes and the other - and some of these were defeated on voice votes. But about $3 billion worth of votes that were considered on the House floor all failed.

So the notion that there is some kind of commitment or sincere commitment, at least to the extent that it was voiced today by members of this committee, to making IDEA full finding a priority simply is not reflected by the outcome of the votes when this Congress was presented the opportunity.

For anybody who is interested in seeing these, I don't want to offend anybody, but the hypocrisy of today's debate is clearly borne out by the roll call votes that have taken place and can be observed. I will just keep them here.

That leads me into my second question for you, Dr. Hehir; and that is, the previous administration had persistently recommended to the Congress level funding for IDEA. During the time that you were there, and I would like you to address that in contrast with the statements that you made, I presume, I can envision, as you were speaking, the conversations that must have taken place when you were making recommendations to the administration that did not end up being recommended to the Congress when IDEA funding was presented here. Can you elaborate on that and kind of tell us what happened behind the scenes? How did the message from you to the Congress get interrupted by the administration?

Mr. Hehir. President Clinton did actually make funding recommendations that were the first funding recommendations that would increase IDEA above the inflation level. In the last several years of the administration, Congress actually put more money into the program than the President requested.

In any administration there is a give and take in priorities. Increasing IDEA more than the President recommended was not a priority. Other things were at that time.

Mr. Schaffer. I appreciate that.

If you look at the statistical correlation between certain events that happened in IDEA and the explosion in IDEA, you can't ignore the event that, frankly, hasn't been mentioned much today, which happened in 1991 when the Department issued a policy clarification that children diagnosed with attention deficit disorder and hyperactivity disorder may be eligible for special education services. It was at that point that we saw IDEA identification not double but actually more than double, from about 11 percent growth for the previous 10-year period to almost, not almost, to a 27.4 percent increase in identification for the next 10 years. That event seems quite significant to me. It is also the most subjective.

This committee has held previous hearings, the subcommittee has, at least, that were pretty compelling and persuasive that there is a financial incentive that is represented not only through IDEA funding but also through SSI for poor families and for Medicare, and through the Medicare programs for individual school districts where that, I am persuaded, leads to overidentification. And the easiest way, if you are willing to accept the area where there is the most flexibility I should say in identifying children under the IDEA program is in these two areas of diagnosis, ADD and ADHD.

Dr. Ladner, I would like to ask if you have seen any - in your research and analysis seen any correlation between that 1991 event and this issue of these two particular disorders.

Mr. Ladner. No. Our research did not address that subject.

Mr. Schaffer. Any observations from Dr. Hehir on that point?

Mr. Hehir. Well, again, I would want to reiterate that in 1997 this committee agreed that we needed to get rid of the financial incentive to identify children and move to a census formula. It moved to that formula after a study was done by the GAO on the issue of identification, and it moved to a census formula so that there wouldn't be an incentive to identify more children than would be appropriate. It added poverty as a weight in the formula to recognize this act, that poverty is associated with disability and that those school districts that have large numbers of poor children should be getting additional assistance. But, right now, there isn't a Federal incentive to identify children under this Act.

Mr. Schaffer. Is there a State incentive?

Mr. Hehir. There can be.

Mr. Ladner. I would just like to note, for a long time school districts have been making a claim - it is probably true, I don't know - that special education students are a financial drain on them. With that claim in mind, to see this very large explosion in the number of kids labeled special education, with that happening anyway makes me wonder if what the Congress has done today is going to get to the root of this problem. It is probably not.

Chairman Boehner. The Chair recognizes the gentleman from New Jersey, Mr. Payne.

Mr. Payne. Thank you very much. Thank you both for the excellent testimony.

I would like to ask you, Mr. Hehir, you recommended increased funding for IDEA's early childhood programs including intervention and preschool programs. Are these programs serving all eligible children currently and are they employing research-based best practices that could benefit non-disabled children?

You know, sometimes we hear that you shouldn't throw money at education. That is not the only answer. I agree you have to have dedicated teachers and small class sizes. However, it seems that you get better teachers when the salaries are better. You tend to have smaller class sizes in communities that can afford it. So I always have been a little kind of concerned about this one thing not to do, and what is not a quick fix is to throw money at education.

I don't know if they throw money at education at Harvard, but I know it costs a lot to go there. But that is another subject. But could you respond to the question, not to the Harvard cost but the question.

Mr. Hehir. On the issue of intervention, I won't respond, respectfully, to the Harvard question.

In the area of early intervention, it is important to increase early intervention programs for kids who have disabilities. But it is as important to improve intervention programs generically for kids who have a high risk of having difficulty in school, and so that would be my prime recommendation here. Those programs should be programs that are research based, that they take advantage of what we know about reading research.

And we know a lot more about reading research in the area of reading research than we used to know. There was a study that was funded by the Department when I was there called *Preventing Reading Difficulties in Young Children.* It was done by the National Academy of Sciences, and I would strongly recommend that you folks look at it.

One of the primary recommendations here is to improve early intervention efforts for kids who come from limited English proficient homes, who come from high poverty homes so that those kids start school with a heads-up as far as language development particularly is concerned.

The study that Dr. Lyon did I think is an important study. It shows that if we have really good approaches in kindergarten, first, second and third grade to address the needs of a predictable problem, and the predictable problem is that some kids struggle learning to read and not wait until later to address those kids, and those kids actually should be getting intensive reading intervention, not necessarily special ed, it may be a mistake to identify those kids too early for special ed. It is important to give those kids intensive reading interventions.

But there is another thing that I want to mention. One of the things that gets thrown around a lot in this area is the notion of learning disabilities. One of the things that is very clear in the studies that Dr. Lyon and his colleagues have done is there is a pretty significant number of kids that, even with the best interventions, are going to struggle with reading and language. Those kids are kids with learning disabilities. That is probably about 4 percent of kids; so it is important that the school districts give at least 4 percent. That is just with dyslexia; it is important that the school districts get the help that they need to serve these kids as well. Those kids are going to need support all of the way through school.

Mr. Payne. Thank you.

I recall Jonathan Kozol's first book, maybe a decade ago, Children in Trouble, a National Scandal, where they talk about-back to the funding part-about the disparity between funding to New Jersey districts, where Camden, New Jersey, spent 50 percent of what one of the more affluent districts in the State did in maybe 15 minutes to that other school district. So I do think that money does tend to help.

Let me just ask a very quick question to Mr. Ladner. The whole question about race, I mentioned that earlier, that as a teacher I did find that race seemed to be a factor.

In the old days, I never had an African American teacher my whole elementary, secondary and college career. So race was always kind of, sort of a little guy, that "what is he doing here" type of thing. But do you think that race plays a role in general education as well as in special education with the high number of African American boys, in particular, many times who seem to present a threat maybe to the teacher or seem to have anti kind of social behaviors? Do educators have different expectations, in your opinion, about educational results for children based upon race?

Mr. Ladner. I believe so. Yes. I think the large scale failure that has manifested in public schools to teach minority children, in particular, basic reading skills, leads to a number of horrible problems such as high dropout rates, et cetera. So, yeah, this is a pervasive problem, not just one that is just limited to special education.

Mr. Payne. Thank you.

Chairman Boehner. The Chair recognizes the gentleman from Virginia, Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman.

I would like to ask our witnesses about cessation of services. Is there any good that can come out of disciplining students right now in ceasing services? As a discipline method right now, it is illegal to cease services. If you have to kick them out of the regular classroom, so be it, but you have to continue services. Do you see any good that can come out of stopping services altogether for people that have been identified under IDEA?

Mr. Hehir. I am glad to answer that question, Mr. Scott. No.

I think one of the things that I would like to add, though, is that we shouldn't be ceasing services for any kids. You can't cease services for kids covered under IDEA because of actions of Congress, and those were totally appropriate actions. We know these kids, particularly when one service is ceased, have a very high likelihood of dropping out of school, not being successful in life, and getting involved in things in the community that you wouldn't want them to get involved in.

But the same is true for nondisabled kids as well. I think it would be a very good thing for this committee to do, which would be to apply that to not only disabled kids but also non-disabled kids.

Mr. Scott. In other words, if you want to equalize it, you ought to equalize it to an intelligent policy, not equalize it into a policy that doesn't make any sense for anybody.

Mr. Hehir. I would agree with that.

Mr. Ladner. I think the most important thing for us to do is to prevent specific learning disabilities from occurring in the first place, and I would also like to recommend to the committee the study by Dr. Reid Lyon.

What seems to be going on is that public school districts have, you know, for whatever reason, failed to teach a number of our low-income and disproportionately minority students proper reading skills. Some percentage thereof are given a label as having a reading disability. And what Dr. Lyons' research shows is that about 70 percent of those could have been prevented by proper reading instruction.

That is, you know, getting to the core base of that problem is more important than ceasing services to any one who is getting it now, although it is an open question as to whether students who have been misidentified should be getting these services. They do take resources away from students who have legitimate disabilities.

Mr. Scott. Do you agree with the previous statement that it is a bad - ceasing services is a bad policy generally, particularly egregious for disabled students?

Mr. Ladner. It would be something that you would not do lightly at all and require a great deal of study. I am not qualified to speak to it.

Mr. Scott. We have heard a lot about research-based solutions. Do we know what is actually needed to make sure that IDEA works the best it can or what more research is needed to help us in our policymaking?

Mr. Hehir. I think actually there is quite a - there is very significant research that has been done that hasn't been fully implemented in schools.

I think one of the things that we have that has been identified this morning as a huge problem is a lack of certified teachers. But there are many research issues for which there hasn't been a lot of research done. The current research program that the Department runs under IDEA must address the needs of a highly diverse population of students, ranging from deaf student to blind students to students with learning disabilities, et cetera.

When I was at the Department we had a forum once at Galludet University just around the issues, the unmet research needs around the issues of deaf children. This was the best people in the country looking at this issue; after we finished and we arrived at the things that should be researched, it would have consumed the entire research budget under IDEA.

So there are many things that need to be researched, and I think actually the Department could enumerate them.

Mr. Scott. One of the things that has been said a couple of times is just throwing money at the problem without targeting the money where it is needed isn't a good idea. If we have areas where research is going to help us effectively use the money, it might make sense to spend a little more money in research. And if it takes that kind of money to figure out what we ought to be doing with deaf students, then maybe the entire budget needs to be expanded so that we can use the money that we are using effectively.

Let me just put on the record, what is wrong with improper identification, either late, not identifying the right people, or overidentifying? What are the problems with wrongful identification?

Mr. Hehir. There are a number of problems with wrongful identification. One is not just the identification - in this particular issue of overplacement of minority kids, it is not just the issue of overidentification, it is also the type of special education programs that they get, which are more apt to be segregated than the educational programs that white children who have disabilities get. So it is the issue of what happens once you get identified.

I think one of the things that we tried to promote, Judy Hillman, who was the Assistant Secretary under President Clinton, and I know the Department has been promoting it even back to when President Reagan was the president, Assistant Secretary Will has promoted, is the notion that special education shouldn't be viewed as a place, that special education for most kids should be services that are designed to help them do better in school. When you find the very real problem of overidentification of minority kids, it is not only just that they are overidentified. Even if they have a disability they are apt to be in a substandard program.

So it is not just the overidentification, but there is another problem, too, which has not be addressed which, if you look at their reading research, if you look at the learning disabilities research, girls are underidentified - girls. That oftentimes the learning problems of girls go ignored. Some people theorize, although we don't have research on this, it is because they are more apt to be docile in school.

So, again, there are problems on both ends as far as this is concerned.

Chairman Boehner. The gentleman from Colorado, Mr. Tancredo, has graciously deferred his position to the gentlelady from California, Ms. Woolsey, who is recognized.

Ms. Woolsey. Thank you so much. I wanted to stay as long as I could; and thank you, Mr. Tancredo.

I wanted, one, to correct something that Mr. Schaffer said earlier and put into the record. He did say that we hadn't voted to fully fund IDEA. And on May the 4th, 1999, there was a bill urging the Congress and the President to fully fund the Federal Government's obligation under the Individuals with Disabilities Education Act that passed 413 to 2 out of the House of Representatives.

I need to make some parochial remarks that relate to my district. I have just read a clip from my district saying that one of the two counties that I represent, I represent two counties north of the Golden Gate Bridge across from San Francisco. Marin County is the most unaffordable place in the country for minimum wage workers to live. In order to live comfortably in Marin County, you need to earn $33.60 an hour.

Now, I say that because those wonderful people elect me on a 2-to-1 margin, and here I am, this bleeding heart progressive.

So why I tell you this is that we have pockets of need in affluent communities as well. And if those who pay the taxes, the high taxes, which they do, don't see anything back in their communities, then I think the programs lose all of the way around.

I just need to say that to have it on record, because we could say that we would withhold funding to the affluent communities, because they will take care of their own, and then they will start resenting the program. Even in those affluent communities we have parents fighting educators and the administration on IDEA issues. We have parents competing with parents and resenting each other, who is getting what and taking away from whom. We just need to stop that around this entire country. Kids who have needs need to be served, period.

So I am going to ask you a question about attention deficit disorder. I have three sons and a daughter, and I would suppose that in this - they are in their late, late 30s. And I would suggest that in today's environment they probably all-they would be suggesting that I put them on Ritalin. Well, I wonder where they got their energy? But they are really energetic, and they would not have been on Ritalin, believe me.

But there is an increase in ADD. I am going to tell you that I think, I would like you to tell me if you have any idea of if this is right or wrong, that these kids in school now are the product of-and not just poor kids-of parents who started drinking and started using, substance abusing early on, and these kids are being born as products of this. And ADD is real, and I don't think we should be resenting these kids that look like everybody else, that, you know, primarily act like everybody else. But they do need extra help.

Mr. Ladner. I believe that prenatal issues are a factor in these disparities. However, what our research shows is that the identified special education rates in white districts, more affluent districts are much higher than those in the lower income districts. So that does not at all explain some of those disparities we see.

Ms. Woolsey. Dr. Hehir, but just let me say one thing. Don't you think that these affluent parents expect a lot from their school districts and from the kids?

Mr. Ladner. In our research we did actually, as one of the possible explanations, investigate whether parental demand was a factor; and the basic result is that whether or not it is - how you measure that is difficult. But basically the race effect was still there. It is not totally explained by parental demand.

Mr. Hehir. Well, I think it is important to emphasize that ADD, ADHD exists. There has been significant research that the Congress has funded at the National Institutes of Health that has really looked into those issues.

Do I think at times kids get overidentified? Yes. I think many times kids who have these disorders, the solution is oftentimes simply the way the classroom is run. It is more a regular education issue than a special education issue. And that there are many things that can be done to enable these kids to be very successful in school.

Ms. Woolsey. I thank you both very much.

Chairman Boehner. The Chair recognizes the gentleman from Colorado, Mr. Tancredo.

Mr. Tancredo. Thank you, Mr. Chairman. And, Mr. Chairman and gentlemen, I apologize for having to have gone back and forth and in and out of this hearing. It is an issue of great concern to me and one on which I have spent a great deal of time. So I preface my remarks with that apology because I don't know if my question is redundant.

But in reading your testimony, especially Dr. Hehir, I am struck with the paragraph dealing with Dr. Reid Lyon's work. Rethinking learning disabilities calls for greatly expanded efforts to address reading failure in the early grades.

I wonder if you can help me understand exactly what it is that separates and that distinguishes the student who has a reading problem and the student who would eventually be identified as a learning disabled child because they have, he or she, has a reading problem? How does that work?

If, in fact, one reason - because I am looking at what you said, if a reason for this, an increase in the numbers, has resulted in nobody addressing reading failures. You see what I am saying? How do we then use that as the criteria for determining, ah, yes, a disability.

Mr. Hehir. I think one of the things that Dr. Lyon's study I think is important in pointing out is that not all kids learn to read the same way, that there are kids who need much more help in learning to read. Oftentimes schools have one-size-fits all readings programs in the first three grades, and what his research has shown is that there are kids who have difficulty learning how to read. Many of those kids, if given more attention to things like thematic awareness, given more attention to learning the sound/symbol relationships, et cetera, are going to get over that hump.

There is a population of kids, though, even with those interventions, who still struggle with reading or are apt to struggle with writing or are apt to struggle with spelling all of the way through school. These are the kids who are apt to be kids who are disabled.

Mr. Tancredo. Why?

Mr. Hehir. For whatever reasons, I don't think the why is answered in his study. It is just that it is simply this. It can be from a number of reasons. Some kids have trouble with reading because they have had some form of brain injury or injuries, and that is a very small percentage of kids.

Mr. Tancredo. Good to know. Brain injuries, small percentage.

Mr. Hehir. But other kids, for whatever reason - we don't fully understand this yet - other kids struggle tremendously learning how to read. And those kids need intervention early, not in the 4th or 5th grade. They need intervention in the 1st grade.

Mr. Tancredo. That is good. Your have answered the question, and I understand what you are saying. But then don't you see how difficult it is for anybody in our position, my position, to justify the expenditures of funds in one program that we identify as special needs kids, as opposed to another program that we identify as Title I services?

And if there are those children with, let's say, brain damage, we can identify them as - that is the reason that we have a problem with reading, then I think undeniably we would suggest that a program - a special program for students with disabilities is where they belong for the kind of specialized attention that might accrue to them as a result of that.

But the problem is - and I don't know this study, but I will tell you, certainly as a teacher myself by background and what I have now seen in a great body of work, research work that has been provided to me since I have been a member of this committee, we are identifying far too many children who are in fact reading, writing, whatever - deficient. We are identifying them as IDEA students mostly because maybe there is no other place for them.

I mean, I don't for a moment suggest that the vast majority of misidentified children - and I will call them misidentified - and I do not believe that the vast majority of people who end up putting those people into those programs are doing so malevolently. I think they are doing so because they have no alternative they think.

We have got a problem. I know it is a problem. Where am I going to put them? And IDEA is that spot.

But we have services. We have programs that we fund specifically to deal with the kinds of issues you are talking about that are not happening.

Now, if you want to come here and say to me, let's increase the amount of money we are providing for early intervention for those children so they can overcome, those that can - and I understand you told me some can't - those that can, we can address that through Title I, I would say absolutely no problem. Okay.

But I am quite concerned that what we have done over time is to place a very large number of children into IDEA programs because of their reading - especially their reading deficiencies, and that program isn't really designed to deal with that. Title I is. Whether we do a good job or not, that is what we are trying to deal with in Title I.

So how can we ignore that? That is all I am really asking you. How do you ask me to ignore the fact or not call these children misidentified?

Mr. Ladner. I would say you should not ignore it at all. The central issue here, this issue and other education issues in the United States, I believe is somehow increasing productivity of the education spending that we already do.

Sixty percent of low-income children in this country should not fall below basic on reading tests. It should not happen. There has been large funding increases. The bang for the buck is simply not there. And you know, until you get to the root of that problem, an element of those other problems are going to hang around as they have for decades.

Mr. Tancredo. Then it becomes incumbent upon us, Mr. Chairman, to be much more judicious about how we approach the issue of expenditures here. Because, frankly, unless we deal with what he has just said, "bang for the buck," it is a counterproductive activity on our part to shovel out more into either one of the programs, probably Title I or IDEA, until we know more about it.

But I especially am concerned about the fact that more and more children are in IDEA without the kind of problems that IDEA was designed to address. As a result, those kids who are suffering from those problems, those maladies, those disabilities, cannot get the services necessary because we are spreading it out too far. In our attempt to try and narrow - more narrowly define it in order to get those kids more help, we are going to get attacked because someone will say we are not living up to our responsibilities.

This is a very difficult world in which we all exist in and a political one, to a large extent, that you guys enter into here.

But I appreciate your comments. I see that I have gone way over in my time. I apologize.

Chairman Boehner. I believe Dr. Hehir wants to elaborate.

Mr. Hehir. I don't want to give the impression that I am suggesting that you ignore this problem. I am not. I am, however, suggesting that it is important to fund these types of programs that have been advocated by Dr. Lyon.

I also think it is important that school districts get increased financial assistance under this program because they have - because the cost of this program for school districts means that many of the other types of innovations they need to do they can't do.

It is important for the Congress in my view to fund IDEA at a higher level.

Mr. Tancredo. How can you not say to us that it is important for us to fund those children who are truly handicapped, truly disadvantaged at a higher level than just fund the system at a higher level? Because, don't you see, we are never going to be able to actually address the problems that the system is designed to - and now I am being redundant, and I apologize.

Chairman Boehner. Dr. Hehir, just briefly. I have one question that is a little off the subject, but you have a distinguished career in special ed. and have been in the classroom. We have dealt for some time - Mr. Scott was referring to some areas in terms of discipline and things like that. The question I have for you is would it be a good idea in your judgment to incorporate in the IEP the parameters of discipline for the individual student?

The reason I mention that is because, at the time the IEP is developed, the parents or guardian is probably the most involved, other than a future crisis. It is also the point in time in which there hasn't been an incident, and it a point in time in which the system's discipline policy or the effects of discipline on that child could be handled in a pretty level-headed way. Would you be supportive of an idea like that?

Mr. Hehir. Yes, and the current law requires that. The changes that took place require IEP teams for students who have behavior issues, and some kids with disabilities have behavior issues, to proactively address those. And I think that is very important.

Chairman Boehner. That is a requirement in all IEPs or just those that have a history?

Mr. Hehir. That would be many kids with disabilities. That is not an issue, if there is no need, for people to spend a lot of time on that. But if you have a child, for instance, who has a disability for which behavior is an issue, it is very important for the IEP team to address those issues up front so that the parent knows, so that the child knows what the interventions are going to be if there is a behavior incident.

We also know of instances where some children with disabilities, if you give them the right services up front, their behavior can improve a lot. That is important to do, as opposed to reacting to behavior at the back end.

Chairman Boehner. Thank you.

Mr. Scott. Mr. Chairman, could I follow up very briefly on that, the prospective discipline? Should expulsion be one of the options on the table?

Mr. Hehir. Removal from the existing education environment might be, to a program that is more appropriate for that student. But continuing the education services.

Mr. Scott. Always be the policy?

Mr. Hehir. Should always be the policy.

Chairman Boehner. I want to thank Dr. Hehir and Dr. Ladner for their testimony today.

I thank the members, Mr. Tancredo and Mr. Scott, for lasting throughout the hearing; and I thank our audience for being here.

STATEMENT SUBMITTED FOR THE RECORD BY THE HONORABLE HILDA SOLIS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX J

QUESTIONS SUBMITTED FOR THE RECORD TO SECRETARY PAIGE BY THE HONORABLE HILDA SOLIS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX K

RESPONSES SUBMITTED FOR THE RECORD BY SECRETARY PAIGE TO QUESTIONS SUBMITTED BY THE HONORABLE HILDA SOLIS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX L

STATEMENT SUBMITTED FOR THE RECORD BY THE HONORABLE HAROLD FORD, Jr., COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX M

QUESTIONS SUBMITTED FOR THE RECORD TO SECRETARY PAIGE BY THE HONORABLE BOB SCHAFFER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES - SEE APPENDIX N

RESPONSES SUBMITTED FOR THE RECORD BY SECRETARY PAIGE TO QUESTIONS SUBMITTED BY THE HONORABLE BOB SCHAFFER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES - SEE APPENDIX O

Chairman Boehner. The Chair announces that the committee stands adjourned.

[Whereupon, at 12:45 p.m., the committee was adjourned.]

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Statement by Rep. John Boehner (R-OH)
Chairman, House Education and the Workforce Committee
On IDEA Overidentification
October 4, 2001

First let me welcome all of you to this morning's hearing – Secretary Paige, Congressman Fattah, and our other witnesses; our senior Democrat colleague from California, Mr. Miller; and all of the members of our committee on both sides of the aisle.

For a quarter-century, the Individuals with Disabilities Education Act (also known as the IDEA) has played important role in ensuring that the doors of learning are open to millions of students with disabilities. Originally passed in 1975, it declares that American children with special education needs must have access to the same public school education that every other young American enjoys.

The federal government has never come close to assuming its share of the financial burden required to meet the requirements of this mandate. While federal funding for the IDEA has increased by 173 percent since 1994, it still falls far short.

Nevertheless, the IDEA system has served a generation of students reasonably well. Countless students who would previously have been denied access to our nation's public schools have been blessed with the chance to learn. Some have moved on to earn high school diplomas and college degrees. All have had opportunities they would never otherwise have had.

Not every story associated with the IDEA is a story of success, however. While its triumphs greatly outnumber its failures, the IDEA system has developed serious cracks that Democrats and Republicans must work closely together to fix next year as we move to reauthorize this important program.

Today's hearing will focus on one of those cracks – specifically, the issue of overidentification. It has become increasingly evident that the IDEA system allows far too many students to be wrongly or mistakenly classified as in need of special education services. As we will learn shortly, this problem strikes particularly hard at minority students.

The issue of overidentification has prompted great concern in Congress. It is the issue that led our colleague from Pennsylvania, Mr. Fattah, to request this hearing last spring.

Whether the subject is the Elementary and Secondary Education Act or IDEA, improving our nation's education system starts with believing that every single American child can learn. To presume that any student is incapable of achieving academic success simply on the basis of race, ethnicity, or special needs is inconsistent with the principles upon which our nation is built.

Our first witness this morning has done more this year to advance this cause than any other individual in America. Since taking office just nine months ago, Secretary Rod Paige has been a relentless champion for disadvantaged students. Mr. Secretary, we are honored that you are with us today.

This has been an historic year for federal education policy. Republicans and Democrats have worked side by side to bring about real change and to refocus the federal role on its original goal of helping those students who need help the most. I thank my partner, Mr. Miller, for his leadership and friendship as we've gone through that process.

The reforms in H.R. 1, including the Reading First initiative ratified by the education conferees last week, will ease some of the burden on the IDEA system. But the fight against the soft bigotry of low expectations will take years to wage. Fundamental improvements are needed in the system itself. When HR. 1 is finished, reform and reauthorization will be the next major education reform project for this committee.

Reform and reauthorization must remain linked. Just as we cannot implement reform without resources, resources cannot be implemented without reform.

I know we will approach this project with the same vigor, candor and trust that we've seen earlier this year. We know our children and our schools deserve nothing less. With that, I yield to my colleague from California, Mr. Miller.

# # # # #

APPENDIX B - LETTER SUBMITTED FOR THE RECORD BY RANKING MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, FROM GARY ORFIELD, DANIEL LOSEN, AND CHRISTOPHER EDLEY, JR., THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY, CAMBRIDGE, MASSACHUSETTS

THE CIVIL RIGHTS PROJECT
HARVARD UNIVERSITY

CHRISTOPHER EDLEY, JR.
Professor of Law
Co-Director

GARY ORFIELD
Professor of Education and Social Policy
Co-Director

Senator Tom Harkin
United States Senate
731 Hart Building
Washington, DC 20510

September 28, 2001

Dear Senator Harkin:

On behalf of The Civil Rights Project at Harvard University (CRP), we are writing to counter misleading assertions and misrepresentations regarding independent research we commissioned depicting minority issues in special education. The studies we commissioned lend no support whatsoever to an argument that either guaranteeing or fully funding the Individuals With Disabilities Education Act would exacerbate the problems highlighted by our research, or that minority students would reap any benefit by limiting increases to federal special education expenditures. Use of our research to oppose federal special education funding guarantees or increases is a clear distortion of our intent and findings.

Our research points out serious civil rights problems in a limited number of special education programs. Specifically, we document both egregious overrepresentation of African-Americans alongside widespread underrepresentation of Asian/Pacific Islanders. Further, our research suggests that certain minority groups are at greater risk for receiving overly restrictive, inappropriate, or inadequate services. These civil rights problems need focused attention through serious civil rights enforcement, including, if necessary, temporary cutoffs of funding to individual districts treating children unfairly. But we believe appropriate treatment will require increased support for earlier treatment, better training, more careful screening, and alternative solutions to classroom problems.

In fact, one can logically infer from the independent research we commissioned that a substantial infusion of funds is needed to bolster federal enforcement to ensure proper IDEA implementation and protection of civil rights. The IDEA, as amended in 1997, requires state and federal oversight to redress significant racial disproportionality in identification and placement. But the available evidence suggests that these requirements have not been effectively or fully implemented. By increasing federal oversight and by encouraging states to intervene where appropriate, the federal government could help improve the quality of instruction, supports, and services received by minority students in both regular and special education.

The only CRP study that discusses restricting federal funds does so in the context of analyzing the viability of the Department of Education's Office for Special Education

124 Mount Auburn Street • Suite 400 South • Cambridge, Massachusetts 02138
Tel: 617-496-6367 • Fax: 617-495-5210 • Email: crp@harvard.edu • Website: http://www.law.harvard.edu/civilrights

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Programs (OSEP) enforcement mechanisms for redressing racial disproportionality. In that study, Dr. Thomas Hehir, who directed OSEP for six years during the Clinton administration, argues forcefully for more frequent exercise of partial withholding by enforcement agents, narrowly targeted to leverage compliance by specific states or districts in certain areas. One of Dr. Hehir's major recommendations is that OSEP ratchet up its enforcement efforts without denying support to thousands of students through the wholesale withdrawal of federal funds. Likewise, federal policymakers should improve IDEA implementation and civil rights enforcement specifically for minority children without imposing limitations on federal special education increases that would negatively impact children with disabilities nationwide.

Furthermore, one study by Osher, Woodruff and Sims suggests that the failure to provide less intrusive early intervention and high quality services for African-American children exhibiting signs of emotional disturbance and trauma leads to overidentification in highly restrictive programs and involvement in our juvenile justice system as these students progress without effective supports and services. Another study depicts a national trend whereby minority students are more likely to be placed in highly restrictive placements compared to white students. There is widespread agreement among researchers that a major contributing factor to minority overidentification and placement in unnecessarily restrictive special education settings is the failure of teachers and administrators in regular education to provide effective instruction in reading and math and to effectively manage their regular classrooms. As a general matter, our research strongly suggests that both general and special education teachers and administrators need better training to deliver effective instruction in the least restrictive, most inclusive, environment appropriate.

Therefore, many minority students would be better served if schools improved the quality and effectiveness of training and intervention in the general education setting. Logically, meeting this need, along with the need for better data collection and reporting on racial and ethnic disparities, and enhanced civil rights enforcement, would require an infusion of special education funds in the short term, which could be expected to result in a net saving of education and juvenile justice expenditures in the long term.

We submit this letter to clarify any confusion about our research findings. If you have further questions, please feel free to contact Christopher Edley, Jr., Gary Orfield, or Daniel Losen, the CRP associate who served as our principal investigator for this research compilation.

Respectfully submitted,

Gary Orfield
Gary Orfield
Co-Director

Daniel J. Losen
Daniel J. Losen
Legal Research &
Advocacy Assoc.

Christopher Edley, Jr.
Christopher Edley, Jr.
Co-Director

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APPENDIX C - WRITTEN STATEMENT OF THE HONORABLE RODERICK R. PAIGE, SECRETARY OF EDUCATION, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, D.C.

Testimony of Secretary Rod Paige
Before the House Committee on Education and the Workforce
Regarding the Over-identification of Minority Students under the Individuals with Disabilities Education Act

Thank you, Mr. Chairman.

I am happy to appear before this Committee and to discuss with you issues related to implementation of the Individuals with Disabilities Education Act (IDEA), including our very serious concerns associated with the disproportionate number of minority students who are referred to special education. I am also eager to explain how these issues speak to our need to reform special education.

I think it would be helpful to put these issues in context. Back in January, as you recall, President Bush made education his highest priority and laid out his education agenda, called *No Child Left Behind*. It has four pillars: accountability for results, local control and flexibility, expanded parental options, and doing what works to improve student performance.

We started this agenda with President Bush's plan to reauthorize the Elementary and Secondary Education Act of 1965 (ESEA). I must say that I have been pleased by the bipartisan cooperation thus far in both the House and the Senate, including the members of this Committee, in reauthorizing that Act. In particular, Mr. Chairman, I want to thank you and Mr. Miller and the members of this Committee for your hard work in producing and passing an excellent bill in the House. I have enjoyed working with many of you to put the Federal government on the right side of reform so we can ensure that our schools serve all of our children well. I also appreciate the work of the conference committee, and I wish the Conference well in finishing its work quickly.

The reauthorization of the IDEA will build on the principles embodied in *No Child Left Behind*. The children served through the IDEA deserve the same thorough review of, the same deliberate attention to, and the same significant reform of, special education.

President Bush means *No Child Left Behind* quite literally. I've worked with him for more than six years, and I understand his thinking and his actions on this. You see, President Bush is committed to the bold proposition that every child can learn. This doesn't mean that after you siphon off the children who have disabilities; or the children who were never properly taught how to read; or the children who never learned English, or the children who disrupted their classrooms, that most of the rest can learn. It means that all of our kids, even the ones our system calls "hard to teach," can learn. He understands that children with disabilities are the most likely to be left behind and have historically been left out and left behind.

Pillars of Reform apply to the IDEA

President Bush and I want to apply the four pillars of reform to the IDEA, just as we did to the ESEA. First, accountability for results is just as important for children with disabilities as for any other children. Second, flexibility and freedom from unnecessary and burdensome federal red tape can help school districts tailor services to the needs of students while preserving students' rights to appropriate services, a task that has often been difficult to achieve under the IDEA. Third, empowering parents to participate more meaningfully in their children's education will improve student performance. Finally, supporting teaching methods and procedures based on scientific research will ensure that we are using what works in teaching our children with disabilities.

We have already started the process of preparing for the reauthorization of the IDEA. Last month, the Department of Education hosted our first summit on learning disabilities here in Washington. We brought together leading researchers, practitioners, parents and advocates of children with disabilities, and others to discuss the current research base for the appropriate identification of students with learning disabilities.

In 1975, Congress passed the Education for All Handicapped Children Act (since renamed the IDEA). When it was passed, this legislation was revolutionary. Like Brown v. Board of Education two decades before, it broke open the doors of the schoolhouse for a new group of students. It promised to take children slated for a lifetime of institutionalization and prepare them instead for independence.

Thanks to the IDEA, we have made great strides during the past 25 years in helping students with disabilities. This law has ensured access to public education for millions of children with disabilities, who were not previously welcome in our public schools. Because of the IDEA, children who were previously excluded from our schools are now sitting in classrooms alongside non-disabled peers, graduating from high school, and pursuing postsecondary education and productive employment. These are notable accomplishments. Yet, despite the progress we have made, there are still significant achievement gaps between children with disabilities and their peers. Children with disabilities are not completing school and are not performing at levels near their peers.

The IDEA has yet to fulfill its promise. The doors are open, but the system still denies too many students the opportunity to reach high academic standards. That is why the IDEA needs reform.

We Have Real Challenges

We have identified a number of issues in the system that require our attention.
First, our system fails to teach many children fundamental skills like reading and then inappropriately identifies some of them as having disabilities. Not only does this hurt

those children who are misidentified, it also reduces the resources available to serve children with disabilities. If we provide all children with scientifically-based reading instruction delivered by well-trained teachers, many will never need special education. However, new research suggests that approximately 5-6% of the total school-aged population may still need more intensive and longer-term interventions provided through special education because the scientifically-based reading instruction is not sufficient to meet their needs.

Second, our system identifies many children who do have disabilities too late. Research shows that children who pass through the early grades with undiagnosed and undetected disabilities will miss opportunities to benefit fully from instruction. In order to serve our children as best we can, we ought to help schools identify disabilities early and address the particular needs of each student immediately. In short, we need to make sure that the right children receive appropriate special education services under the IDEA, and that they receive them as soon as possible.

Our third concern is that when you look at State data, you find that the proportion of minority students identified in some disability categories is dramatically greater than their share of the overall population. More specifically, African-American students are labeled as mentally retarded and emotionally disturbed far out of proportion to their share of the student population. Department of Education national data show that 2.2% of all black students, but only 0.8% of all white students, are identified as mentally retarded. Similarly, 1.3% of all black students, and only 0.7% of all whites are identified as emotionally disturbed. In Alabama, blacks are four times as likely as whites to be identified as mentally retarded; in Indiana, three times as likely. In Florida, blacks are twice as likely as whites to be identified as emotionally disturbed; in Kentucky, four times as likely. This problem of disproportional identification of some minority groups in some categories of special education occurs in many other States.

For minority students, misclassification or inappropriate placement in special education programs can have significant adverse consequences, particularly when these students are being removed from regular education settings and denied access to the core curriculum. Of particular concern is that, often, the more separate a program is from the general education setting, the more limited the curriculum and the greater the consequences to the student, particularly in terms of access to postsecondary education and employment opportunities. The stigma of being misclassified as mentally retarded or seriously emotionally disturbed, or as having a behavioral disorder, may also have serious consequences in terms of the student's self-perception and the perception of others, including family, peers, teachers, and future employers.

While minority children are disproportionately represented in special education, it is difficult to determine to what degree this is related to poverty or race. Research has demonstrated that poor children are more likely than affluent children to have disabilities. Since minority children are more likely to be poor, it therefore follows that they may also be more likely than white children to have disabilities.

Congress asked the National Academy of Sciences to review the evidence of disproportionate representation of minority students in special education, examine the potential causes of this disproportionality, and recommend to the Department ways to address this problem. The NAS report is due this fall, and we are eager to get the analysis, because we need to understand the nature and scope of the problem better, devise solutions, and reform our programs.

Our fourth concern is about how well we are serving our children with disabilities. If you look at how our special education programs are currently implemented in our schools, you will see that they do not always focus on giving high-quality instruction to all children. Instead, they too often focus on process as a means to avoid conflict and litigation.

While we have seen significant improvements in services to students with disabilities and their families, we have a long road to travel before we reach the goal of *No Child Left Behind*. Although about 6 of every 10 American students with disabilities graduate with a regular high school diploma, in some states the graduation rate is fewer than one in four. That rate defies the promise of the IDEA and it must be addressed. The data get worse when we disaggregate by race. Fewer than half of African-American children with disabilities leave school with diplomas. In Nevada, Louisiana, Georgia, Mississippi, and Alabama, the situation is worse yet: fewer than one in five African-American children with disabilities receives a diploma.

Our fifth concern is the issue of paperwork. When I was superintendent in Houston, I worked with the special education teachers who do this critical work. I admire and respect them greatly, but I understand their frustration. As a practitioner, I can tell you that the paperwork and time required to demonstrate compliance with the IDEA regulations are discouraging many teachers from entering and remaining in the field. Special education teachers move to positions in regular education, or leave education altogether, not because they do not want to work with children with disabilities, but because they feel that too much of their time is spent complying with regulations that do not assist students in becoming successful learners. Teachers often told me that their goals were to teach facts and skills, not worry about paperwork and litigation. In the upcoming reauthorization, we must eliminate costly and unnecessary paperwork, while maintaining due process protections for children with disabilities and their families.

Money Alone Will Not Address All of Our Needs

As I have discussed, special education is filled with many complex issues that need to be addressed within the context of a thorough review of the IDEA and as part of a comprehensive package of reforms. That is why the Administration opposes any proposal for mandatory IDEA funding within the context of the ESEA reauthorization. In fact, we are very concerned that these proposals will impede, rather than support, special education reform.

President Bush and I recognize the many challenges faced by States and localities in carrying out their responsibility to educate children with disabilities. While IDEA funding has nearly tripled over the last five years, we recognize the importance of providing additional funding. In his budget, President Bush requested a billion dollar increase for IDEA, the largest increase ever requested by a President. But we know in the IDEA, as with the ESEA, that money is ineffective if it is not tied to accountability and reform. Money alone has not, will not, and cannot improve student performance.

We need research-based solutions

Our special education system needs solutions based on solid research. We must devise reforms that will help all of our children with disabilities. That is why I am pleased to announce today that President Bush is creating a new commission to study the problem. Under the leadership of Former Governor Terry Branstad, the President's Commission on Excellence in Special Education will study Federal, State, and local special education programs and recommend how we can reform our special education system in order to improve the educational performance of children with disabilities. Specifically, it will tell us what new research we need, how Federal and State requirements help or impede special education, and what we should do to improve student performance and to ensure that no child is left behind

President Bush and I are determined to ensure that every child gets a sound education. With the Commission's work, your support, and a shared commitment to doing what is right for our children with disabilities, I believe that we will get to the point where truly no child is left behind.

Conclusion

As I conclude my testimony today, I want to emphasize that my review of special education as currently implemented in our schools leads me to believe that we should focus not on process, but on results; not on compliance, but on performance. We should measure success-- not by how many children we identify as disabled, but by how much they, and all children, learn; and we should feel good-- not about how much money we spend, but about how many children we help.

All parents have the right to expect high standards in educating their children. We can accept no less. This also means excuses are not good enough: We need results. It means raising average performance is not enough: We need to look at all children to ensure that they are learning. I look forward to working with you to address these critically important issues as we prepare for the IDEA reauthorization.

APPENDIX D - RESPONSE SUBMITTED FOR THE RECORD BY SECRETARY PAIGE TO A QUESTION SUBMITTED BY CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Mr. Boehner: Can you outline for the Committee what these difficulties have been over the last year in getting that $675 million?

Secretary Paige: Allow me to submit that to you for the record.

IDEA EXPENDITURES

In fiscal year 2000, Congress appropriated $4,989,685,000 for the Grants to States program, a $679,000,000 increase over the amount appropriated for fiscal year 1999. Of these funds, the Department made $4,976,685,000 available to the 50 States, DC, Puerto Rico, the Secretary of the Interior, and the Outlying Areas. As of October 4, 2001, a substantial portion of these funds, $1,585,339,282, or 31.9%, had not yet been spent. These funds first became available on July 1, 2000, but were still available in October of the school year after the school year for which they were appropriated. While six States had expended at least 90 percent of their funds, the rest of the States still had significant funds available. These are funds that could be used for such things as salaries, materials, and contracts for services.

For fiscal year 2001, Congress appropriated $6,339,685,000, an increase of $1,350,000,000, or 27.1 percent. Of these funds, the Department made $1,267,685,000 available to the States on July 1, 2001 and $5,056,000,000 on October 1, 2001. As of September 30, 2001, only $53,788,000, which is 4.2 percent of the funds available July 1, 2001 or .9 percent of the total appropriation, had been expended. The slow drawdown of funds indicates that sufficient funds are available to meet States' immediate needs.

The Administration recognizes that States and localities face many challenges in carrying out their responsibility to educate children with disabilities. While education, including the education of children with disabilities, is primarily a State and local responsibility, we believe that it is important for the Federal Government to continue to provide support to States and local educational agencies to serve children with disabilities. However, since 1996, funding for that program has grown by over 170 percent, and the Federal contribution has risen from 7 percent of the national average per pupil expenditure (APPE) to 15 percent. The President's budget request for fiscal year 2002 would further increase funding for the Grants to States program by $1 billion, to a level of $7.3 billion. This is the highest level of Federal support ever provided and largest increase ever proposed by a President in his budget. In addition, the IDEA Amendments of 1997 changed the ways that funds are distributed within States. This has led to an increase of almost 220 percent in the minimum amount of Grants to States funds that must be passed through from the State level to local educational agencies. Because States are still spending the funds appropriated for fiscal year 2000, there is a risk that Federal funds would not be spent effectively if additional major increases are provided.

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10-4-01

U.S. Department of Education

IDEA Grants to States Program

UNEXPENDED FUNDS

Fiscal Year 2000

Total Appropriation -- $4,989,685,000

Funding Availability	Budget (Total Available)	Unexpended Funds (Awarded to States, but not drawn down)
Forward Funding (July 1, 2000)	$1,234,685,000 [1]	$87,313,277 [2]
Advance Funding (Oct. 1, 2000)	3,742,000,000	1,498,026,005 [3]
TOTAL (Percent)	4,976,685,000	1,585,339,282 (31.9%)

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[1] Excludes $13,000,000 set aside for evaluation.

[2] Unexpended funds from Ohio ($33,906,979), the Bureau of Indian Affairs ($49,155,180), and the Outlying Areas ($3,432,891) account for $86,495,050 of the $87,313,277.

[3] Ohio ($141,986,267) and Nebraska ($26,089,102) did not report any expenditures from their allotments.

Explanation: The Department awarded $4,976,685,000 under the Grants to States program to the 50 States, DC, Puerto Rico, the Secretary of the Interior, and the Outlying Areas from FY 2000 funds. Of these funds, the States have not yet spent $1,585,339,282, or 31.9%, by Oct. 4, 2001. These funds are still available for such things as salaries, materials, and contracts for services. The percentage of funds unexpended in FY 2000 is consistent with historical expenditure patterns in which the States spend approximately 2/3 of the funds available in the first 15 months.

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APPENDIX E - RESPONSE SUBMITTED FOR THE RECORD BY SECRETARY PAIGE TO QUESTIONS SUBMITTED BY THE HONORABLE LYNN RIVERS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

THE PRESIDENT'S FY 2002 BUDGET REQUEST

President Bush signaled his intention to make education his top priority when he announced *No Child Left Behind* — his framework for strengthening elementary and secondary education-four days after his inauguration. The President's commitment to improving education grew out of his own very personal conviction that for too long our education system has tolerated an unacceptable achievement gap between disadvantaged and minority students and their more advantaged peers.

For example, on the latest National Assessment of Educational Progress in 4th grade reading, 73 percent of white students performed at or above the basic level, compared with just 40 percent of Hispanic students and only 36 percent of African American students. These figures suggest that America's system of elementary and secondary education is failing to do its job for too many of our children-a failure that threatens the future of our Nation, and a failure that the American people will no longer tolerate.

It is just as clear that Federal education policy is not accomplishing its goals, despite the investment of more than $130 billion in the Elementary and Secondary Education Act and the creation of hundreds of categorical programs over the past three decades. In fact, it is often this bewildering array of Federal programs, regulations, and paperwork that gets in the way of promising reforms at the State and local levels. These bureaucratic controls promote a culture of compliance, not real accountability measured by improved student achievement.

President Bush believes it is time to stop funding failure and start building a culture of achievement in our education system. To do this we need to learn from States and school districts across the country that have made remarkable progress in turning around failing schools, raising student achievement, and closing the achievement gap. We need to bring to Federal education programs many of the strategies that have worked so well at the State and local levels: increased accountability for student performance, a focus on research-based practices, reduced bureaucracy and greater flexibility, and better information and choices to empower parents.

In particular, *No Child Left Behind* outlines a comprehensive approach to accountability involving annual testing in reading and math of all students in grades 3-8, regular reporting of test results to parents and the public, extra help for low-performing schools, and greater choices for students in chronically failing schools. States are free to develop their own systems of accountability based on their own standards and assessments. Once those systems are in place, however, States will be rewarded for improving student performance and closing achievement gaps or risk losing a portion of Federal administrative funds if they fail to make sufficient progress.

The President's 2002 budget request makes a solid down payment on delivering the resources needed to implement these accountability measures as well other changes proposed in *No Child Left Behind*.

The President is requesting $44.5 billion in discretionary appropriations for the Department of Education in fiscal year 2002, an 11.5 percent increase in budget authority and an increase of $2.5 billion or 5.9 percent over the 2001 program level. The Department received the largest percentage increase in the President's 2002 budget of any Cabinet-level domestic agency.

Major increases in the 2002 request include $1 billion for Special Education Grants to States, $1 billion for Pell Grants, $614 million for the Reading First State Grants initiative, $459 million for Title I Grants to Local Educational Agencies- of which $175 million will expand State and local assistance to low-performing schools, $375 million for the State Grants for Improving Teacher Quality proposal, $320 million to help States develop and implement annual reading and math tests for all students in grades 3-8, and $175 million for a new Charter School Homestead Fund to help increase public school choice for parents and students.

Total Department of Education Appropriations
(program level, in billions of dollars)

	2000	2001	2002 Request
Discretionary	$35.6	$42.1	$44.5
Mandatory	2.8	.3	4.3
Total	38.4	42.4	48.9

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Mandatory programs include Vocational Rehabilitation State Grants and the student loan programs. Mandatory costs fluctuate from year to year due to changes in interest rates and other factors affecting the costs of operating the student loan programs.

The Department's 2002 request is complemented by significant non-discretionary investments in education, such as raising the allowable annual contribution to tax-free Education Savings Accounts from $500 to $5,000 and permitting tax-free withdrawals to pay educational expenses from kindergarten through college. The request also would allow teachers to deduct out-of-pocket classroom expenses, permit States to issue tax-exempt private activity bonds for school construction, and provide a full tax exemption for all qualified higher education pre-paid tuition and savings plans.

The combination of discretionary and non-discretionary resources in the President's budget is targeted to the following areas:

Closing The Achievement Gap

The Federal government can, and must, help close the achievement gap between disadvantaged students and their peers through stronger accountability, help for failing schools, and more choices for parents. One of the primary means of closing the achievement gap is to spend the Federal investment in Title I more effectively and with greater accountability. The following support the strengthened accountability and school improvement requirements of *No Child Left Behind*:

- $9.1 billion for Title I Grants to Local Educational Agencies, an increase of $459 million to give States and school districts additional resources to turn around failing schools, improve teacher quality, and ensure that all students achieve to the standards at their grade levels before advancing to the next level. The request would focus these additional resources on high-poverty school districts by allocating the entire increase through the Targeted Grants formula. The request also provides, within the $9.1 billion total, $400 million for State and local technical assistance to help turn around low-performing schools.
- $900 million for a new Reading First program to help States and local educational agencies (LEAs) implement comprehensive reading instruction grounded in scientifically-based reading research for children in kindergarten through third grade. This proposal builds on and replaces the Reading and Literacy Grants program, and would more than triple funding for reading instructionófrom $286 million in 2001 to $900 million in 2002.
- $846 million for 21st Century Community Learning Centers to support a State formula program that provides high-quality extended learning opportunities, after school and during the summer, for children in low-performing schools, including drug- and violence-prevention activities and character education.
- $320 million to help States develop and implement annual reading and math assessments for all students in grades 3-8. States would be permitted to select and design their own new assessments, which must be in place by the 2004-2005 school year, so long as they are aligned with State standards and student achievement results are comparable from year to year.
- $75 million for Early Reading First, an initiative that would complement Reading First State Grants by supporting model programs to develop the academic readiness of preschool-aged children. Activities would support scientifically based strategies to enhance pre-reading skills and school readiness for children in Head Start and other preschool programs.
- $30 million for Transition to Teaching to support the effective Department of Defense Troops to Teachers program by providing quality teachers for more students in poor school districts. In addition, the Secretary of Education would have the authority to build on this program to recruit, prepare, and support a wide range of talented career-changing professionals as teachers, particularly in high-poverty schools and in high-need subject areas.

Empowering Parents With Choices

President Bush believes that one of the best ways to improve accountability in our schools is to give parents the information and options needed to make the right choices for their children's education. This is why, for example, the accountability proposals in *No Child Left Behind* include school-by-school report cards and give students in failing schools the option of transferring to a better school. In addition, the 2002 budget request includes the following:

- $200 million for Charter Schools, an increase of $10 million, to stimulate continued growth in the number of charter schools, an important element of the Administration's proposal to increase choice for students and parents. This request, combined with funds released because a number of projects will conclude their 3-year

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funding cycle, would support approximately 1,780 new and existing charter schools that offer enhanced public school choice and have the flexibility to offer innovative educational programs in exchange for greater accountability for student achievement.

- $175 million for a new Charter Schools Homestead Fund, as part of the President's strategy for expanding school choice. This new initiative builds on the fiscal year 2001 $25 million Charter School Facility Financing Demonstration Grants initiative by providing grants to leverage funds to construct, lease, purchase, or renovate academic facilities for use by charter schools.
- Increase the annual contribution limit for education savings accounts from $500 to $5,000. The higher contribution limit would be phased in over 5 years, increasing to $1,000 in 2002 and by an additional $1,000 per year through 2006. The Administration also proposes to expand education savings accounts to allow tax-free and penalty-free distributions for certain elementary, secondary, and after-school program expenses. Expenses for both public and private educational institutions would qualify.

Expanding Flexibility And Reducing Bureaucracy

The Administration believes that it is possible to achieve better results by reducing regulations, paperwork, and bureaucracy and giving States and communities the flexibility to create their own solutions to problems in areas like education, health care, and protecting the environment. The President's budget would expand efforts to consolidate and streamline existing education programs, reduce paperwork and regulatory burdens, give States and school districts the flexibility to use Federal funds to address their own priorities, and ensure accountability through performance-based grants. Major proposals include the following:

- $2.6 billion for State grants for improving teacher quality, a new formula grant program that would combine funding from several existing education programs, including the Class Size Reduction and Eisenhower Professional Development State Grants programs, into performance-based grants. The proposal would provide a $375 million or 17 percent increase over the antecedent programs to help States and local educational agencies (LEAs) fund their own needs and priorities in developing and supporting a high-quality teaching force.
- $817 million for Educational Technology State grants, a proposal to consolidate all of the Department's current educational technology programs into a single, performance-based grant program to ensure that schools use technology effectively to improve teaching and learning.
- $472 million for Choice and Innovation State grants, a new initiative that consolidates small and duplicative programs into one flexible grant program to help States and school districts implement their own innovative strategies, including school choice, for improving student achievement.

Other Key Elementary And Secondary Proposals

- $7.3 billion for the Special Education Grants to States program, an increase of $1 billion or 15.8 percent over the 2001 level. This level of funding would provide an estimated $1,133 for each child with a disability, an amount equal to about 17 percent of the national average per pupil expenditure. This would be the highest level of Federal support ever provided to educate children with disabilities.
- $644 million for Safe and Drug-Free Schools State grants to more effectively provide students with drug- and violence-prevention programs and to implement strategies to improve school safety.
- Allow States to issue tax-exempt private activity bonds for school construction. The Administration proposes to provide States with annual authority of $10 per resident (or $5 million, if greater) to issue tax-exempt, private activity bonds for constructing and equipping public elementary and secondary schools. Current law does not exclude from income the interest on such bonds used to finance school construction or equipment. Private entities would construct the schools and own the schools while the bonds are outstanding; ownership would revert to the school district when the bonds are retired.
- Allow teachers to deduct out-of-pocket classroom expenses. The Administration proposes to allow teachers and other elementary and secondary school professionals to treat up to $400 in qualified out-of-pocket classroom expenses as a non-itemized deduction (above-the-line deduction), effective for expenses incurred in taxable years beginning after December 31, 2001. Expenditures for books, supplies and equipment related to classroom instruction and for professional training programs would qualify for this deduction.

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Postsecondary Education

The President's 2002 request would expand support for Federal programs that help prepare low-income and minority students for postsecondary education, student financial aid programs that help students and families pay rising college costs, and programs that strengthen postsecondary institutions serving large proportions of minority students. The budget request also includes tax proposals designed to lessen the burden of paying for postsecondary education.

- Funding for the Pell Grant maximum would increase by $1 billion to $9.8 billion to improve access to postsecondary education for students from the neediest families. The request would support a maximum grant of $3,850, the highest ever. More than 4 million students would receive Pell grants.
- Student financial aid available, excluding the consolidation of existing student loans, would expand to $49.4 billion, an increase of $2.2 billion or 4.6 percent over the 2001 level. The total number of recipients of grant, loan, and work-study assistance would grow by 46,000 to 8.2 million students and parents.
- Tax-free distributions from Qualified State Tuition Plans (QSTPs) would be permitted for qualified higher education expenses, including room and board, tuition and fees, and certain expenses for books, supplies, and equipment. The Administration also proposes to allow private educational institutions to establish qualified prepaid tuition plans, provided the institution is eligible to participate in Federal financial aid programs under Title IV of the Higher Education Act of 1965.
- The request would expand loan forgiveness for math and science teachers serving low-income communities from $5,000 to a maximum of $17,500. Schools in those communities are often forced to hire teachers who lack certification in these subjects or to assign teachers who are teaching "out-of-field." This proposal would help these schools recruit and retain qualified math and science teachers.
- The Exclusion for Employer Provided Education Assistance would be extended. Under current law, employees may exclude from their gross income up to $5,250 per year of employer-provided educational assistance for undergraduate courses beginning before January 1, 2002. The Administration proposes to extend this exclusion to undergraduate courses beginning before January 1, 2003.
- A $15 million increase for the Aid for Institutional Development (Title III) programs demonstrates the Administration's commitment to assisting institutions that enroll a large proportion of minority and disadvantaged students. The request includes a $12 million increase for Strengthening Historically Black Colleges and Universities and a $3 million increase for Strengthening Historically Black Graduate Institutions.
- A $4 million increase for Developing Hispanic-Serving Institutions would expand and enhance support to postsecondary education institutions that serve large percentages of Hispanic students. This program is part of the Department efforts to increase academic achievement, high school graduation, post-secondary participation, and life-long learning among Hispanic Americans.
- A $50 million increase for TRIO would support substantial increases for the Talent Search and [illegible]ucational Opportunity Centers programs to increase the number of projects and improve the level of outreach and support services designed to help low-income students enroll in and complete a college education.

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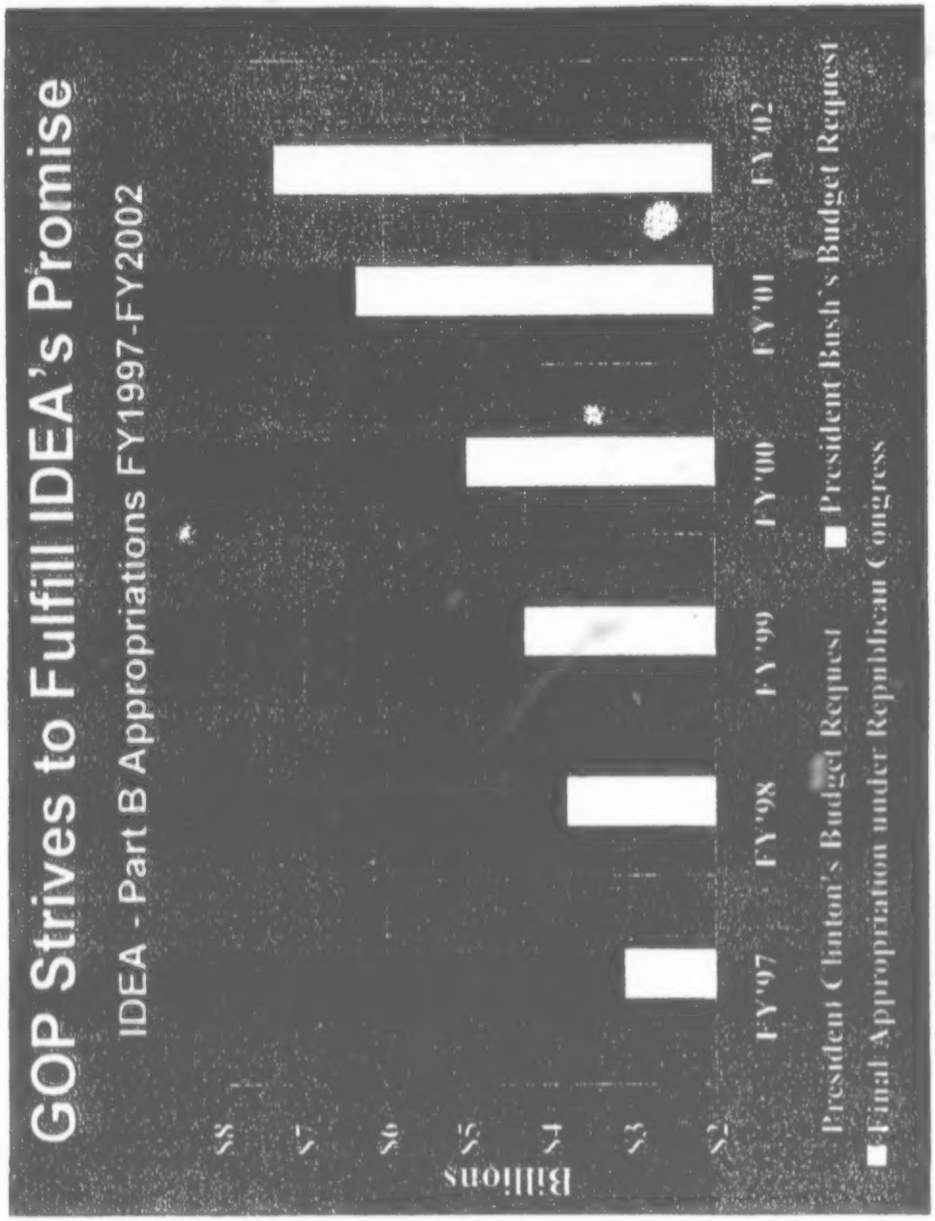
APPENDIX F - CHART SUBMITTED FOR THE RECORD BY THE HONORABLE HOWARD P. "BUCK" McKEON, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES



GOP Strives to Fulfill IDEA's Promise

IDEA - Part B Appropriations FY1997-FY2002

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APPENDIX G - WRITTEN STATEMENT OF THE HONORABLE CHAKA FATTAH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Testimony of Congressman Chaka Fattah
U.S. Representative
2nd Congressional District of Pennsylvania

On Over Identification Issues within the Individuals with Disabilities Act and the Need for Reform

For the Committee on Education and the Workforce
U.S. House of Representatives

October 4, 2001

Thank you, Chairman Boehner, Ranking Member, Miller, and members of the Committee for giving me this opportunity to contribute to the debate on over-identification issues as pertaining to minority students in special education. It is my pleasure to testify before this Committee on this very important issue.

Special education is intended to provide support and valuable assistance to help students with disabilities learn to their full potential. In order to achieve that goal, Congress, in 1975, passed the Education for All Handicapped Children Act, which was later renamed the Individuals with Disabilities Education Act, or IDEA as it is commonly known today. While I believe IDEA is improving the learning of students with true disabilities, there is growing concern about the high rate at which minority students are being misidentified for special education.

The problem is not new, Mr. Chairman. An article published in the December 13, 1993, issue of U.S. News describes the case of Billy Hawkins, who, for the first 15 years of his life, was labeled by his teachers as "educable mentally retarded." Billy was backup quarterback for his high school football team. Things didn't change for Billy until he came off the bench one night and rallied his team from far behind. In doing so, Billy ran complicated plays and clearly demonstrated a gift for the game. The school principal, who was in the stands, recognized that the "retarded kid" could play, and soon after, had Billy enrolled in regular classes and instructed his teachers to give him extra help. Billy went on to complete a Ph.D. He later accepted the position of Associate Dean of the School of Education at Michigan's Ferris State University.

This is just one example. The 1993 U.S. News article also discusses a five-month examination that it conducted of the nation's special education system. Through the study, U.S. News documented a network of programs that regularly used subjective testing criteria, that relied on funding formulas and identification procedures that funneled ever greater numbers of children into special programs each year, and that, in state after state, included disproportionately high numbers of African American children.

The U.S. News analysis found that African Americans were twice as likely as whites to be classified as mentally retarded back in 1993, while white students were placed much more often than African Americans in a less stigmatizing category. The study also found that in a majority of states, African American students were over-represented in special education programs relative to their percentage of the overall student population. Ironically, black students were most likely to be over-represented in special education classes when they were students in predominantly white school districts.

It's been eight years since publication of the U.S. News article in 1993, Mr. Chairman, and it appears that things have not improved; indeed, things have become even worse. According to a draft report on the Civil Rights Project recently completed by Harvard University, researchers found that African American children are almost three times as likely as white children to be labeled mentally retarded and placed in special education. (This is an increase from the findings reported by U.S. News back in 1993.) In five states, Connecticut, Mississippi, North Carolina, South Carolina, and Nebraska, African American students are four times as likely as their white counterparts to be labeled mentally retarded. The draft report also found that among secondary school students with disabilities, 75 percent of African American students, as compared to 47 percent of white students, are unemployed two years out of school.

Another important finding of the Harvard study, as you know Mr. Chairman, is that while African American students may be over-represented in special education, they might be receiving less-relevant educational and related services than white students with disabilities. For instance, the study found that white students with disabilities received twice as much occupational therapy and life training services as similar African American students.

Earlier this year, I expressed my concerns about the disturbing findings of the Harvard Civil Rights Project and urged the Congress and the Administration to support efforts to address its findings and bring an end to this very serious problem. Thank you very much, Mr. Chairman, for your commitment of support.

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I am aware that there are a number of promising efforts underway to better understand this issue or verify the existence of the problem. One example is the study underway by the National Academy of Sciences, which is further examining the question of minority over-representation. As you know, Mr. Chairman, Congress called for this study in 1998. Another example would be the continuing research and technical assistance activities of the Department of Education. These efforts provide insight into the issues and strategies related to this complex issue. Then there is the President's early reading initiatives, which should help toward solving the problem.

I certainly applaud these and other ongoing efforts to deal with this issue. However, Mr. Chairman, in order to deal with it most effectively, we must develop a better understanding of the reasons minority students are mislabeled at such disproportionate rates. We must find clear answers to such questions as:

> What are the first signs that a student may be learning disabled? Why do disproportionately more African American students exhibit these symptoms?
>
> What are the criteria used in assessing a student's learning ability? What is the process? Are the criteria or process standard across schools, school districts, or states? Who conducts the assessment? What are the qualifications of that individual or group to make such assessments?

- Do children who are placed in special education classes receive the same educational opportunities as their counterparts? Do their schools receive the same financial contributions as other schools?

Mr. Chairman, the Harvard study suggests that, because special education identification and eligibility is a long process, heavily influenced by many inseparable subjective and objective decisions, solving the problems of over-representation of minority students will require a comprehensive systemic approach. In order to be effective, I believe this approach must consider answers to questions such as those I have raised. To that end, Mr. Chairman, I would make the following recommendations:

- First, I would recommend that this body call for a study designed to learn more about the first signs that a child has a learning disability, the criteria and process for assessing learning ability, qualifications of those making assessments, and so on. I believe the NAS would be the appropriate scientific body to conduct such a study. This study would provide the answers we need to move forward.

- Secondly, some believe that the structure and provisions of IDEA are contributing to the problem of minority over-representation, and are discussing the need to reform or "fix" the legislation. While I am certain there are many other factors involved, I would support a thorough evaluation of the legislation.

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Finally, Mr. Chairman, we already have a wealth of information at our disposal that we did not have just a few years ago. The Harvard study, which I reference often in this testimony, is one example of a comprehensive effort that provides a great deal of information about the over-representation issue. In fact, I was happy to learn that some of its contributors would be testifying at this hearing today. The NAS is also in the final stages of a two-year examination of the issue that was requested by Congress in 1998. I understand that a report should be out at the end of this month. My third, and final, recommendation, then, Mr. Chairman, is that hearings be scheduled to occur soon after the NAS releases its report. These hearings should focus on a discussion and debate of the findings and recommendations from the Harvard and NAS studies, with the goal of developing a better collective understanding of the nature and extent of the problem, particularly the causes.

Once again, Mr. Chairman, I want to thank you for this opportunity to address the committee, and for your support in addressing this important issue. I am committed to ensuring that our young people are provided the best educational opportunities available and will be happy to cooperate in every way possible to end the improper tracking of minority students in special education.

Thank you.

APPENDIX H - WRITTEN STATEMENT OF THOMAS HEHIR, LECTURER ON EDUCATION, GRADUATE SCHOOL OF EDUCATION, HARVARD UNIVERSITY, CAMBRIDGE, MASSACHUSETTS

Committee on Education in the Workforce

Overidentification Issues within IDEA and the Need for Reform

Testimony of Dr. Thomas Hehir

October 4, 2001

Testimony of Dr. Thomas Hehir

Good morning Mr. Chairman, ranking member Miller and members of the committee. My name is Dr. Thomas Hehir. I am currently Director of the School Leadership Program at the Harvard Graduate School of Education and Lecturer on Education. Prior to coming to Harvard in 1999, I was Director of the Office of Special Education Programs for the U.S. Department of Education from 1993 to 1999 as an appointee of the Clinton Administration. This office has statutory responsibility for implementing the IDEA. Prior to coming to Washington I served in special education leadership positions in Boston from 1978 to 1987 and more recently in Chicago where I served as Associate Superintendent of schools from 1990 to 1992. I began my career as a special education teacher. I have been asked to testify on the issue of overrepresentation of minorities in special education and its connection to fully funding the federal commitment to special education.

Essentially my position on these issues is that they are not directly related and that the failure to meet federal financial commitments to special education may actually be making the very real problem of overrepresentation of minorities, particularly African Americans, worse. I hope my remarks today will help clarify these issues.

To begin with I believe that inappropriate placement of minorities, particularly African American males, in special classrooms is a serious problem worthy of the attention of this Committee. It is clear to me from both research and my own personal experience that there are significant numbers of students who have been inappropriately placed in special education. There is also further evidence that these African American students, both those appropriately and in-appropriately identified, are disproportionately served in separate or segregated settings. (My remarks today will focus primarily on the overrepresentation of African Americans because there is more research available on this population and because there is evidence that other minorities may actually be underrepresented.)

Some overrepresentation of minorities in special education may be due to the well-documented link between poverty and disability. The National Longitudinal Transition Study (NLTS) found some degree of overrepresentation in unambiguous categories of significant disability such as blindness and deafness. This study which included large samples of students in the late 80s and early nineties documented rates of African Americans in these disabilities of a little over 20% compared to a 15% rate in the general population. The overrepresentation of minorities in these categories of significant disability is likely due to the impact of poverty and inferior access to health care. For instance, poor women are more apt to have low birth weight babies. Poor children are more likely to be exposed to lead or to trauma in their environment. These factors and others associated with poverty can increase the incidence of disability in a population. Therefore, given the fact that African American children are much more likely to be poor than the general population, some overrepresentation should be expected. The link between poverty and disability was dealt with extensively in the Nineteenth Annual Report to Congress on the Implementation of IDEA (1997) and I would recommend that report to you as a source of further guidance in this area.

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However, excepting a link between poverty and disability, the overrepresentation of minority students in some more ambiguous categories of disability significantly exceeds what would be predicted by the impact of poverty. For instance, some studies have shown that the number of African American students labeled mildly mentally retarded approaches 40% of population with this designation. That means that African American students are more than twice as likely than majority children to receive this label. Added to this, is that once these children are identified, they are more likely to be placed in separate settings than the overall special education population. This issue is explored more extensively in the Eighteenth Annual Report to Congress (1996) which deals specifically with issues concerning implementation of IDEA in urban settings. The issue is serious and thus warrants the attention of this committee.

Actually this committee, under the leadership of Mr. Goodling and with strong bipartisan support, took significant action on this issue when it re-authorized IDEA in 1997. The IDEA was amended in significant ways to address this issue. First, states are required to collect racial data and to intervene where overrepresentation is identified. Further, in order to alleviate the low expectations associated with many special education programs, all students with disabilities are required to have appropriate access to the general curriculum and to participate in local and state accountability systems. Finally, Congress added important new enforcement mechanisms to assist the Department of Education in its efforts to implement these new provisions.

Some might argue that these changes have not worked and that further "reform" is needed. It should be noted, however, that the implementing regulations for the 97 amendments did not take effect until 1999. I am sure that the members of this committee would recognize that the American education system does not change that rapidly.

Some have argued that Congress should not meet its fiscal commitments until these problems are resolved. I strongly disagree with that view for the following reasons. First, there is no federal fiscal incentive to over-identify students. Congress eliminated this incentive in the 97 re-authorization by switching the funding formula to a census and poverty basis. Thus, school districts do not receive additional money for identifying additional children. The Clinton Administration specifically proposed this amendment as a means of addressing the overrepresentation issue. Further, Congress eliminated an incentive to placing children in separate environments by requiring states to have "placement neutral" funding formulas for IDEA. States, therefore, can no longer employ funding mechanisms that promote separate placement of students with disabilities as many did prior to 1997.

The failure to provide adequate federal funding for special education may actually be exacerbating the problem of overrepresentation. A number of researchers have identified the lack of early reading and behavioral interventions as a contributing factor to this problem. Dr. Reid Lyon, an advisor to President Bush, along with several eminent colleagues, has written an excellent article, "Rethinking Learning Disabilities", that calls for greatly expanded efforts to address reading failure in the early grades. Implementation of the recommendations contained in this piece could decrease the number of minority students placed in special education and I recommend this article to the committee for further guidance in this area. Ironically, the lack of funding for special education means that many of the districts that have the greatest need to implement these innovations, those with large populations of poor and minority students, will not

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have the resources to do so. Their resources are currently stretched due to existing special education obligations.

There are several actions the committee could take to address this issue.

(1) Increase access to health services for poor women and children. Though some overrepresentation may be explained by poverty and lack of access to health care does not mean we should accept this situation. A country as wealthy as ours can afford to provide adequate health care for pregnant women and children. Failure to do so will increase the number of children that have disabilities.

(2) Support early intervention programs. High quality preschool programs, and early intervention for students experiencing difficulty with reading and behavior have been shown to decrease the number of children inappropriately referred to special education. These programs have also been shown to benefit children who have disabilities.

(3) Support increasing discretionary programs of research and technical assistance under IDEA. States and local school districts need assistance in implementing the types of innovations that can alleviate this problem. The discretionary programs authorized under IDEA are designed to assist educators and parents in their efforts to improve implementation. Though these programs are effective, they are relatively poorly funded and should be expanded to support innovation.

(4) Support improved monitoring and enforcement of IDEA. Though there are powerful monitoring and enforcement mechanisms in IDEA, they are not self implementing. They require an active federal presence. The history of federal enforcement of IDEA has been relatively weak. One reason for this is the relative small size of the federal work force devoted to this issue, about fifty people. Though I believe a significantly larger workforce is justified in this area, the more important factor is the willingness of both administrations and Congress to support strong federal enforcement. When I was at OSEP, members of Congress from the states involved in enforcement actions immediately opposed several enforcement actions, brought by the Department of Education. Given the fact that IDEA now addresses the issue of overrepresentation, this committee should seek a significantly enhanced federal monitoring and enforcement role and support the Department in doing its job.

(5) Fully fund IDEA.

I will be happy to answer any of your questions.

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Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: THOMAS HEHIR		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No ✓
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998:		
3. Will you be representing an entity other than a government entity?	Yes	No ✓
4. Other than yourself, please list what entity or entities you will be representing:		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract:		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No ✓

Signature: Date: Sept 26, 2001

Please attach this sheet to your written testimony.

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APPENDIX I - WRITTEN STATEMENT OF MATTHEW LADNER, POLICY DIRECTOR, CHILDREN FIRST AMERICA, SMITHVILLE, TEXAS

Children First
AMERICA
parental choice in education

TO: HONORABLE MEMBERS OF THE COMMITTEE ON EDUCATION AND THE WORKFORCE

FROM: MATTHEW LADNER

SUBJECT: TESTIMONY ON THE ENROLLMENT OF MINORITIES IN SPECIAL EDUCATION

DATE: 9/10/2001

My name is Dr. Matthew Ladner, and I serve as the Policy Director of Children First America, a major education foundation promoting choice in education for low-income students. Last year, my co-author Dr. Christopher Hammons and I conducted a statistical study of race and special education rates on behalf of the Thomas B. Fordham Foundation and the Progressive Policy Institute. Our study, titled "Special But Unequal: Race and Special Education" was included in as Chapter 5 of the edited volume Rethinking Special Education for a New Century which was published in May of 2001.

We examined statistical data in order to determine whether a student's race impacts his or her probability of receiving a special education label from a public school district. We tested the strength of the relationship between race and special education rates by using the multiple regression technique, which can test the strength of the effects of variables while statistically holding other others constant. Multiple regression reveals the independent impact of various factors. We began our investigation by examining countywide special education rates from California, Colorado, Florida, Georgia, Maryland, New York, Oregon, Texas and Wisconsin. In seven of these nine states, the relationship between race and special education rates was statistically significant, even after the introduction of control variables poverty levels and spending per pupil in each county. We were surprised to find a significant relationship, but we were even at the size of the effect and most surprised to find that the race variable had a negative coefficient in 6 of the 9 states. This finding

☐ National Office:
901 McClain Road, Suite 802
PO Box 330 • Bentonville, AR 72712
Phone: (501) 273-6957 • Fax: (501) 273-9362

☐ Washington, DC Office:
444 N. Capitol Street NW, Suite 400
Washington, DC 20001
Phone: (202) 737-7725 • Fax: (202) 737-7727

☐ Austin Office:
4412 Spicewood Springs Rd., Suite 201
Austin, TX 78759
Phone: (512) 345-1083 • Fax: (512) 345-1280

E-mail: childrenfirstamerica@childrenfirstamerica.org • Website: www.childrenfirstamerica.org

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meant that as the percentage of minorities in a particular county went up, the percentage of students in special education went down. Stated another way, we found that counties with higher percentages of White students had higher special education rates. This finding seemed to be completely at odds with the documented fact that minorities are over-represented in special education. We moved on to examine district level data from Florida, Maryland and Texas- finding that the same pattern held. The higher the percentage of White students in a school district's student body, the higher the special education rates, even after the introduction of numerous controls for factors such as district spending, student poverty rates, and community profile variables.

After introducing a number of other controls, my co-author and I were forced to conclude that race plays a very large role in the diagnosis process. The fact that high percentages of minority students in a district is associated with lower special education rates while minorities overall are grossly over-represented in special education programs was difficult to explain. Our research led us to the following specific conclusion to explain this apparent contradiction: not only are minorities over-represented in special education, but minorities are significantly more likely to be placed in special education programs when they attend predominantly White districts. In other words, predominantly White schools, with predominantly White students and teachers, have been placing disproportionately high numbers of their minority students into special education, completely independent of other considerations.

We cite district level data in the report to demonstrate that White districts enroll a greater percentage of minority students in special education than majority-minority districts. Enrollment rates for all ethnic groups are highest in primarily White districts, but enrollment for minorities change as substantially according to the demographics of the district. A higher percentage of African-American students are placed in special-education programs than any other racial group. African-American students have a much higher special-education rate than Hispanic and White students in every category. In our dataset's predominantly White districts (60% white or greater), almost 1 in every 4 African-American students is in special education. In predominantly minority districts, approximately 1 in 5 African-American students are in special education. In predominately White districts, the African-American special education rate is 50% higher than that for White students, while among predominantly minority districts, the difference was only 25%.

Overall, we found that race impacts special education rates far more than any other variable. In fact, the effect of race is nearly double that of the next highest variable and has a greater overall impact than the other three significant variables combined pertaining to poverty among students or the level of district spending. Our research shows that the influence of race survives the inclusion of a variety of control variables and plays the most powerful role. The results demonstrate conclusively that school districts do not make special education placements in a color-blind fashion. Commentators have noted the expansion and possible abuse of special education designations. If one is concerned about the possibility of such abuses, the data indicates that the primary setting for such abuse of special education labels is in predominantly White public school districts, and that the primary victims are minority children. Our data demonstrate that the special education rates of minority children systematically vary according to the race or the students and/or teachers surrounding them. The fact that the special education process is glaringly impacted by race warrants both concern and further research.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: MATTHEW LADNER		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No ✓
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998: NONE		
3. Will you be representing an entity other than a government entity?	Yes	No
4. Other than yourself, please list what entity or entities you will be representing: Children First America		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: Director of Policy		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract: NONE		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: Matthew Ladner Date: 9-7-2001

Please attach this sheet to your written testimony.

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APPENDIX J - STATEMENT SUBMITTED FOR THE RECORD BY THE HONORABLE HILDA SOLIS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

HILDA L. SOLIS
31st District, California
website: www.house.gov/solis

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Washington, DC 20515
(202) 225-5464
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☐ 4401 Santa Anita Avenue
Suite 211
El Monte, CA 91731
(626) 448-1271
Fax: (626) 448-8062

☐ 4716 Cesar Chavez Avenue
Building A
East Los Angeles, CA 90022
(323) 307-9904
Fax: (323) 307-9906

Statement of Rep. Hilda L. Solis
Hearing on the Over-identification of Minority Students under IDEA
October 4, 2001

I am pleased that the Committee is holding this hearing on the over-identification of minority students in special education programs. This is an issue I am concerned about, and I am eager to hear the testimony of our distinguished guests, especially Secretary Paige.

As we proceed today, I hope our witnesses will help us better understand what is causing the disproportionate placement of minority students within special education. I am especially concerned with the fact that Limited English Proficient (LEP) students are often incorrectly identified as learning disabled. And I am worried about research which found that LEP students in English immersion programs are more likely to be identified for special education and placed in restrictive special education classrooms that students in bilingual programs. This is yet another reason to re-examine some people's push for English immersion over bilingual education.

I also think we need to do more to ensure that civil rights laws are not being violated with the over-identification of minority children in IDEA programs. Schools may not realize that they are violating some of the rules governing IDEA. We can and should do more to encourage the dissemination of quality information to our local school districts about the rules pertaining to special education.

I hope our witnesses will touch on some of these issues and I yield back the balance of my time.

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APPENDIX K - QUESTIONS SUBMITTED FOR THE RECORD TO SECRETARY PAIGE BY THE HONORABLE HILDA SOLIS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

HILDA L. SOLIS
31st District, California
website: www.house.gov/solis

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Washington, DC 20515
(202) 225-5464
Fax: (202) 225-5467

☐ 4401 Santa Anita Avenue
Suite 211
El Monte, CA 91731
(626) 448-1271
Fax: (626) 448-8062

☐ 4716 Cesar Chavez Avenue
Building A
East Los Angeles, CA 90022
(323) 307-9904
Fax: (323) 307-9906

Questions from Rep. Hilda L. Solis
Hearing on the Over-identification of Minority Students under IDEA
October 4, 2001

Secretary Roderick Paige

1. Secretary Paige, I'm glad you share our concern about the over-identification of minorities for special education programs. Can you tell me more about what the Department of Education's Office for Civil Rights and Office of Special Education Programs are doing to enforce the rules pertaining to IDEA? What are they doing to disseminate information to local school districts? I'm afraid that without more enforcement and sharing of information, we're at risk of more minority students being inappropriately identified as disabled.

2. Some research (cited by the Harvard Civil Rights Project) suggests that Limited English Proficient students who are immersed in English language classrooms are more likely to be identified for special education and placed in restrictive special education classrooms than students in bilingual programs. Given this fact, I'm concerned that the Bush Administration supports English immersion rather bilingual education programs.

Are you concerned about this research finding? Will it affect the Administration's support for English immersion over bilingual education?

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APPENDIX L - RESPONSES SUBMITTED FOR THE RECORD BY SECRETARY PAIGE TO QUESTIONS SUBMITTED BY THE HONORABLE HILDA SOLIS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Question: Secretary Paige, I'm glad you share our concern about the over-identification of minorities for special education programs. Can you tell me more about what the Department of Education's Office for Civil Rights and Office of Special Education Programs are doing to enforce the rules pertaining to IDEA? What are they doing to disseminate information to local school districts? I'm afraid that without more enforcement and sharing of information, we're at risk of more minority students being inappropriately identified as disabled.

Answer: The Department funds a number of research, technical assistance, and monitoring activities to address the issue of disproportionate representation. These are listed below.

RESEARCH AND TECHNICAL ASSISTANCE

- The National Academy of Sciences (NAS) recently completed a congressionally mandated study funded by the Department on the disproportionate representation of minority students in special education programs. The ensuing report by the expert committee that worked with NAS is quite comprehensive, includes key findings, and provides practical recommendations. OSEP has held numerous briefings at the Department and future activities are planned for dissemination to a broader audience including State and Local Educational Agencies (SEAs/LEAs).

- The Elementary and Middle Schools Technical Assistance Center, supported by the Department, is working with many school districts around the country to reduce disproportionate representation of minority children in special education. By identifying at-risk youngsters and planning support for them in the general education setting before referral to special education, we hope to ensure that only students who have disabilities receive special education.

- In October, the National Institute for Urban School Improvement (funded by the Department) conducted a symposium, with the Harvard Civil Rights Project, on Minority Issues in Special Education. A series of position papers on disproportionate representation is being developed by the projects involved.

- A project the Department supports with the National Association of State Directors of Special Education (NASDSE) is developing a comprehensive resource document for States that describes best approaches for preventing and correcting disproportionate representation and lists expert consultants on the topic.

- The Department is supporting a research project being conducted by Dr. Beth Harry at the University of Miami that will explain how placement processes in special education may contribute to disproportionate representation. Dr. Harry will develop improved placement procedures designed to ensure that the right children are placed in special education.

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MONITORING

- OSEP monitoring staff look at data on identification and placement of children with disabilities by race/ethnicity. The data reviewed are from OSEP State-reported data and Office for Civil Rights school-level data. In addition, OSEP reviews student records and interviews school personnel, parents, and students.

- OSEP monitoring staff review data to determine if disproportionality exists between the percentage of minority students in the school population and the percentage of students in special education. Staff also review data to see if minority children are disproportionately placed in separate settings.

- OSEP monitoring staff carefully examine the identification and placement decisions for students compared to information from evaluations. In addition, OSEP looks at referral practices to see if minority children are disproportionately referred to special education. Although findings related to disproportionate representation vary from State to State, consistent findings have been made related to how placements are determined. In many cases, students are placed in restrictive settings based on their disability, administrative convenience, or historical practice. Frequently, it is racial or ethnic minority children who are affected by these practices. OSEP staff monitors the measures used for diagnosing the existence of a disability. The use of more than one test and culturally competent assessments to prevent inappropriate identification and placement are monitored.

Question: Some research (cited by the Harvard Civil Rights Project) suggests that Limited English Proficient students who are immersed in English language classrooms are more likely to be identified for special education and placed in restrictive special education classrooms than students in bilingual programs. Given this fact, I'm concerned that the Bush Administration supports English immersion rather than bilingual education programs.

Are you concerned about this research finding? Will it affect the Administration's support for English immersion over bilingual education?

Answer: The Administration does not favor any one instructional method. The President's *No Child Left Behind* framework for reforming elementary and secondary education, announced a year ago, emphasized that school districts are in a far better position than the Federal Government to determine the appropriate instructional method, and called on Congress to free school districts to "select a teaching approach that meets the needs of students."

The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, which the President recently signed, requires only that school districts implement "high-quality language instruction educational programs that are based on scientifically based research" (see section 3115(c)). Furthermore, section 3125(2) of the newly amended ESEA provides that the ESEA does not require States and school districts to "establish, continue, or eliminate any particular type of instructional program for limited English proficient children."

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APPENDIX M - STATEMENT SUBMITTED FOR THE RECORD BY THE HONORABLE HAROLD FORD, Jr., COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

HAROLD E. FORD, JR.
9TH DISTRICT, TENNESSEE

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FAX: (202) 225-5663

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MEMPHIS, TN 38103
TEL.: (901) 544-4131
FAX: (901) 544-4329

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Congressman Harold E. Ford, Jr.
Committee on Education and the Workforce:
"Over-Identification Issues within the Individuals with Disabilities Education Act and the Need for Reform"
October 4, 2001

Mr. Chairman, thank you for holding this hearing on the Individuals with Disabilities Education Act (IDEA) to explore issues surrounding IDEA funding and reform.

Since it was enacted in 1975, IDEA has provided school districts with critical resources to educate students with disabilities. These students have the same rights and must be given the same opportunities. They often have special needs. The goal of IDEA is to help local school districts meet these needs.

Like every federal program, IDEA must be continually reexamined by the authorizing committee to measure whether it is achieving its mandates. And like every other federal program, IDEA needs reform. Our witness here today from the Harvard Civil Rights Project has undertaken years of research into IDEA and education in general. They have found that minority students -- particularly African American boys -- are over-represented in segregated educational settings. Asian Americans are under-represented among students with disabilities who receive services.

As we discuss these issues, we are lucky to have Congressman Fattah back with us. As a former member of this Committee, Congressman Fattah continues to be one of the foremost leaders in the Congress on issues of fairness and opportunity in education.

Whether federal funding is somehow responsible for the discrepancies that have been identified is unproven. What *has* been proven, over and over again, is the need for full funding of IDEA. The intent of IDEA was to meet 40 percent of average per pupil expenditures to help educate students with disabilities. But since then, we've fallen well short of our intended goals. This should be set in law, not dependent on annual appropriations. Disabled students need a quality education *every year*.

I thank the Secretary, Congressman Fattah, and our other witnesses for being here. I look forward to making necessary program reforms to IDEA, and to ensuring full funding at long last.

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APPENDIX N - QUESTIONS SUBMITTED FOR THE RECORD TO SECRETARY PAIGE BY THE HONORABLE BOB SCHAFFER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Secretary Rod Paige

FROM: Congressman Bob Schaffer of Colorado

DATE: October 9, 2001

RE: Questions related to IDEA

Due to time constraints during last week's IDEA hearing, I was unable to ask you a few questions. Please submit your answers to the following questions for the official record. Thank you.

1. As you know, recent research by Harvard University's Civil Rights Project shows that Black students are nearly three times as likely to be assigned to special education under the label of "mentally retarded" than are their white peers. Black students are also less likely than white students to return to the mainstream classrooms. What is being done by the Department of Education to target this problem? We hear about the problem quite often but we do not hear about the implementation of solutions.

2. What is being done by the Department of Education to ensure effective special education programs—with the backing of scientific research—are being duplicated and implemented among practitioners?

3. In 1999, 100 Black Men of America, Inc. partnered with the Policy Makers Partnership Project of the National Association of State Directors of Special Education to create the Wimberly Initiative, a community-based program to reduce special education referrals among black students while increasing the numbers of black students exiting special education. The Wimberly Initiative has now been implemented in seven state chapters with extraordinary results. Is the Department of Education aware of the positive work being done by 100 Black Men of America without direct federal support? Is the Department working with 100 Black Men of America or other similar organizations to reduce the number of black students in special education?

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APPENDIX O - RESPONSES SUBMITTED FOR THE RECORD BY SECRETARY PAIGE TO QUESTIONS SUBMITTED BY THE HONORABLE BOB SCHAFFER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

QUESTION: As you know, recent research by Harvard University's Civil Rights Project shows that Black students are nearly three times as likely to be assigned to special education under the label of "mentally retarded" than are their white peers. Black students are also less likely than white students to return to the mainstream classrooms. What is being done by the Department of Education to target this problem? We hear about the problem quite often but we do not hear about the implementation of solutions.

ANSWER:

The Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services has funded studies to investigate the complex issue of disproportionate representation. At the end of this month, the National Academy of Sciences will release a report that will provide information on the efficacy of special education programs and recommend programs that appropriately identify and address the needs of minority children with disabilities.

Another study from the University of Miami is completing its final year and will help us understand how certain processes used to identify, assess, and place students in high-incidence special education programs may contribute to the overidentification and overrepresentation of ethnic minority students in such programs. This study will also identify referral and placement decision-making processes that successfully prevent overidentification and overrepresentation while also providing beneficial educational outcomes for students.

Presently, OSEP funds two large centers that commit a portion of their resources to the issue of disproportionate representation. The Elementary and Middle Schools Technical Assistance Center (EMSTAC) is working with a number of local school districts across the country to examine disproportionate representation. The primary approach of ESTAC for improving outcomes for students of color and decreasing referral rates into special education involves providing resources to local, school-based staff. This approach is based on a systemic, proactive model of student support and staff development that includes the following components:

- A leadership driven philosophy of high expectations for student success and support for all students in meeting this goal.
- A systemic, school-wide approach to academic and behavioral supports focusing on: prevention of problems; early intervention for students at risk; and intensive intervention for students at higher levels of need.
- Adoption of a school-wide data collection system to allow for monitoring of all academic and behavioral referrals, suspensions and expulsions.
- Staff accountability for utilizing all available supports prior to special education referral or removal of any student from the school.
- Alignment of all staff professional development activities to identified areas of need.
- Parent, staff, and volunteer involvement in providing tutoring, mentoring, and behavioral support for students and cultural competency support for school staff (Woodruff, 2001).

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EMSTAC has also developed policy suggestions for state and local education agencies.

The second OSEP-funded Center that is devoting some resources to the issue of disproportionate representation is the National Institute for Urban School Improvement. The National Institute for Urban School Improvement has partnered with the Harvard Civil Rights Project to sponsor a round table discussion on urban school reform and the issue of reducing disproportionate representation of minorities in special education. The information on disproportionate representation specific to urban populations will be key to understanding how to improve outcomes for students in urban settings.

In addition, since 1993, the Office for Civil Rights (OCR) has been conducting proactive compliance reviews of school districts across the country to address the issue of over-representation of minority students in special education programs. After a Department of Education funded study by the National Academy of Sciences (NAS) in the 1980's, OCR held a national conference in Washington, D.C. in the summer of 1993, to discuss the issue. Those in attendance at this national conference included parents, psychologists, special education personnel, and advocacy groups. The conference attendees discussed the reasons for disproportionate placement of minorities in special education. As a result of this discussion, OCR organized a team to develop an approach to conducting compliance reviews that would target these potential problem areas to determine whether discrimination was occurring in the referral, evaluation and/or placement of minorities in special education programs.

Since 1993, OCR has conducted approximately 172 compliance reviews, and has obtained approximately 155 agreements or action plans from individual school districts and from state education agencies. In these agreements or action plans, school districts or state education agencies have committed to take actions to address problems identified by OCR that may have resulted in the disproportionate placement of minority students in special education. Many of these 172 school districts and state education agencies were selected for a compliance review because of the significant number of black students included in "mentally retarded" special education categories.

OCR has monitored each agreement or action plan, working with the districts or state education agencies on an individual basis. OCR has offered legal guidance and recommendations to ensure proper implementation of the agreements or action plans. Generally, OCR monitors these agreements or action plans for a period of three years to ensure that the districts fully implement their commitments and effectively address the identified problems. OCR is currently monitoring over 60 agreements or action plans.

An assessment conducted by OCR three years ago of its impact revealed that 3 of every 4 school districts, in a sample of districts that were being monitored, had realized a decrease in the number of minority students referred and/or placed in special education. As an example, in one Florida school district, OCR received information to reflect the impact of using non-verbal intelligence tests to place students in the Educable Mentally Retarded (EMR) program, instead of traditional intelligence tests. When the district used the non-verbal intelligence tests, the results indicated that 89% of the black students tested, 65% of the white students tested, and 67% of the Hispanic students tested were subsequently changed from the EMR category to another category because the district could no longer support a placement in EMR. The overall change rate for these students was 74%. The results indicated that when non-verbal tests are used with the regular battery of tests, different outcomes occurred in the diagnosis and placement of students suspected of being disabled.

School districts have also reported other successes, such as improving students' academic performance, enhancing teachers' skills, and increasing parental involvement. Some school districts have developed innovative programs for students at-risk in the regular classroom to prevent inappropriate referrals for special education testing. In addition, through OCR's assessment of the impact of these compliance reviews, OCR has identified a focus on effective preschool programs and a focus on effective reading programs in the early elementary years as possible promising practices for reducing referrals of minorities for special education testing.

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QUESTION: What is being done by the Department of Education to ensure effective special education programs-with the backing of scientific research-are being duplicated and implemented among practitioners?

ANSWER:

The Office of Special Education Programs (OSEP) has a long history of supporting high quality research and working to ensure that the research findings are effectively implemented in classrooms, schools, and communities. The Research to Practice Division (RTP) of OSEP is charged with the implementation and supervision of the IDEA Part D National Programs. The Part D programs include investments in research, technical assistance, technology, personnel preparation, parent training, and state improvement grants. Together this group of investments has led the field of special education in not only developing a high quality research base but also providing an infrastructure that supports the transfer of that information to the state and local level.

Each year RTP issues priorities in research both directed - needs identified at the national level - and non-directed - needs identified by the field. Model demonstration research projects are also funded as a means of moving research based findings into actual school and community settings to research the factors effecting implementation.

Another major funding mechanism that is essential to the implementation of research-based practices is the OSEP technical assistance network. The OSEP technical assistance and dissemination network provides the critical connection linking the research - what we know works - with the field - those who need this information most - teachers, parents, university teacher trainers, early intervention providers and a host of others that touch children with disabilities on a daily basis. The OSEP TA&D network is our primary strategy for building and enhancing state, community, and school capacity to provide effective educational services to students with disabilities.

In addition to the funded activities OSEP has several process in place or in development to ensure that we continue to fund high quality research. For the past two years OSEP has been involved in an extensive strategic planning process for the Part D National Programs. One step of this process was to convene an eighty person expert panel consisting of researchers, parents, teacher trainers, national organization members and other practitioners. Divided into five working groups these experts discussed the current status of special education, a vision of what special education should be like, and determined strategies to make that vision a reality. A report outlining this process and OSEP's strategic plan, based on input from the expert panels, will be presented to Congress later this year. One of the benefits of this process and the combined expertise of researchers and practitioners was a more accurate understanding of what areas will require additional research and what areas have a strong research base but need further implementation in the field.

QUESTION: In 1999, 100 Black Men of America, Inc. partnered with the Policy Makers Partnership Project of the National Association of State Directors of Special Education to create the Wimberly Initiative, a community-based program to reduce special education referrals among black students while increasing the numbers of black students exiting special education. The Wimberly Initiative has now been implemented in seven state chapters with extraordinary results. Is the Department of Education aware of the positive work being done by 100 Black Men of America without direct federal support? Is the Department working with 100 Black Men of America or other similar organizations to reduce the number of black students in special education?

ANSWER: Yes, the Department of Education is fully aware and supportive of the work of the 100 Black Men of America to reduce special education referrals among African American students. As you may be aware, the Office of Special Education Programs (OSEP) funds the Policy Maker Partnership (PMP), in total, through a cooperative agreement with the National Association of State Directors of Special Education (NASDSE). Therefore, the 100 Black Men of America, although not directly supported by the Department of Education, does receive indirect federal support for this important initiative from the Department through a sub-contractual relationship with the Policy Maker Partnership.

The Wimberly Initiative began in 1999 as a pilot project between the 100 Black Men of America, the PMP and the Families and Advocates Partnership for Education (FAPE), also funded by OSEP. Since that time, the initiative has expanded considerably. Currently chapters of the 100 Black Men of America are working with schools in seven large urban areas (the current pilots projects are located at 100 Black Men of America Chapters in Charlotte, NC; San Antonio, TX; Memphis, TN; and Las Vegas, NV; plus three additional Chapters that are in development) to reduce the presence of African American males in special education. Demonstrating the collaborative nature of the Partnership Projects, each chapter works with district administration and with faculty and staff at school sites. They have involved such local resources as higher education, parent centers, Boys and Girls Clubs, churches, community agencies and organization. Although each project is unique, all focus on academic progress, behavior, and attendance. This initiative was featured as a "promising practice" in June 2001 at the Partnerships' Summit on the Shared Implementation of the Individuals with Disabilities Education Act, also sponsored by OSEP.

In addition, the OSEP-funded IDEA Local Implementation by Local Administrators (ILIAD) Partnership Project, housed at the Council for Exceptional Children (CEC), is working with the National Association of Black School Educators to develop a document specifically designed for local school administrators. This document will help school administrators to work more effectively with African American children and other minorities within their schools. It will also provide administrators new ways of helping school staff work towards reducing the over representation of minority children into some special education programs.

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There are two other "quality checks" in place for OSEP funded projects. First prior to funding the applications go through a peer review process. Review teams are drawn from the OSEP Standing Panel based on their content and technical expertise, the reviewers are provided and orientation and evaluation criteria and OSEP staff monitors their work. Following the peer review, scores are statistically analyzed and an OSEP staff member, prior to awarding funds reviews approved projects a second time. The other quality review is measured as part of the OSEP Part D GPRA process. One of the Part D performance indicators measures the rigor of the methods and materials implemented in funded projects. Each year a random sample of projects are measured against a protocol of quality methods and materials. Based on the results of these annual evaluations, additional directions and guidance are included in both future application packets and continuing projects to continually improve the quality of Part D projects.

A final procedure OSEP is currently planning is to institute a review and dissemination process aimed at identifying and approving evidence based practices. A similar process called the Joint Dissemination Review Panel and later the National Diffusion Network used to be in place in the department. OSEP views this process as a means of developing explicit criteria for demonstrating effectiveness that is evidentiary based and provides a public standard for effective practice. Compiling a list of federally endorsed effective practices will also strengthen the ability of state and local practitioners and parents to make informed decisions about practices to employ.

The Research to Practice Division has a strong commitment to the development of high quality research but just as important is the commitment to transfer the research findings from controlled, clinical settings into actual classrooms schools and communities and at the same time maintain the fidelity and rigor of those findings.

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